



SAN JUAN COUNTY
CONSTRUCTION CONTRACT BID SPECIFICATIONS

BID NO. 20-21-05 Re-Bid

Prepared by:
San Juan County
Public Works Division
Nick Porell, P.E., Public Works Director
100 S. Oliver Dr
Aztec, NM 87410
Phone: 505-334-4530

T.Y.Lin International
500 4th St NW #403,
Albuquerque, NM 87102
Contact: Howard Cake
Phone: 1-505-730-0882

The technical material and data contained in these Specifications were prepared under the supervision and direction of the undersigned, whose seal as a Professional Engineer, licensed to practice in the State of New Mexico, is affixed below.



ACKNOWLEDGEMENT OF RECEIPT FORM

Bridge 8130 Replacement on County Road 5500
BID 20-21-05 Re-Bid
March 16, 2021
3:00 PM

BIDDER INFORMATION:

In acknowledgement of receipt of the above referenced Bid Packet, the undersigned agrees that he/she has received a complete copy. Only potential Bidders who elect to return this form will be added to the Plan Holder's list and will receive copies of any future addendums to the Bid, if issued.

BUSINESS NAME

SIGNATURE OF AUTHORIZED REPRESENTATIVE

PRINTED NAME OF AUTHORIZED REPRESENTATIVE

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE NO.: _____ FAX NO.: _____

E-MAIL: _____

Please select which you would like to be listed as:

General Contractor Sub-Contractor Supplier Plan Room

RETURN TO:

Jaime Jones
Contract Analyst
SAN JUAN COUNTY
PHONE (505) 334-4548
jjones@sjcounty.net

**Emailed copies of the Acknowledgement of Receipt form will be accepted.
Emailed Bid responses will not be accepted.**

**SAN JUAN COUNTY
CONSTRUCTION CONTRACT BID SPECIFICATIONS
TABLE OF CONTENTS**

SECTION	DESCRIPTION	PAGE
1	ADVERTISEMENT FOR BID	1-2
2	INSTRUCTIONS TO BIDDERS	2-1 to 2-7
3	MINIMUM WAGE RATES	3-1 to 3-4
4	UNIT PRICE BID	4-1 to 4-12
5	AGREEMENT	5-1 to 5-14
6	STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT	6-1 to 6-66
7	SUPPLEMENTARY CONDITIONS	7-1 to 7-8
8	NMDOT SPECIAL PROVISIONS	8-1 to 8-3
9	NMDOT SUPPLEMENTAL SPECIFICATIONS	9-1
10	DRAWINGS (Under Separate Cover)	
11	GEOTECHNICAL REPORT (Under Separate Cover)	
12	CATERGORICAL EXCUSION (Under Separate Cover)	

ADVERTISEMENT FOR BIDS
BID 20-21-05 Re-Bid

Bidders are invited to submit sealed bids for the construction of the Bridge 8130 Replacement on San Juan County Road 5500. The project consists of constructing the demolition and construction of a bridge crossing San Juan River, roadway improvements, signing, striping, grading, riprap, and other work as indicated in the bid specifications.

Bids to complete with work will be received by San Juan County, New Mexico, Office of Central Purchasing, at 213 S. Oliver Drive, Aztec, NM 87410, until **3:00 pm local time, March 16, 2021** at which time and place all bids will be publicly opened and tabulated. Bids received after 3:00 pm shall not be accepted.

Bids will be received for a single prime Contract. Bids shall be on a unit price basis, as indicated in the Bid Form.

The Bid and Contract Documents may be obtained on the San Juan County website. When utilizing the County's website, please complete the Acknowledgement Form that is posted within the Project Manual so you can be listed as Plan Holder, and will automatically receive addendums, if issued. You are reminded that you are solely responsible for checking the County's website for updates. **Please feel free to visit our Website, www.sjcounty.net, Click on the "Bids, Proposals & Vendors" icon to access the bid. Hard copies of the project will NOT be provided San Juan County.**

Bidding Documents may also be obtained at: Academy Reprographics, 8900-N San Mateo Boulevard NE, Albuquerque, New Mexico, 87113, (505) 821-6666. A \$200 deposit will be required for each set of documents, which constitutes the cost of reproduction, handling and applicable taxes. Any bona fide bidder upon returning the documents in good condition within ten (10) days following the Bid Opening will be returned the full deposit amount. Partial sets of Bidding Documents will not be available. Neither Owner nor Engineer will be responsible for full or partial sets of Bidding Documents, including Addenda if any, obtained from sources other than the Issuing Office.

A pre-bid conference will be held at **2:00 pm local time on February 23, 2021** in the Public Works Conference room located at 305 S. Oliver Dr., Aztec, NM. A site visit will be held after if needed. Attendance at the pre-bid conference is highly encouraged but is not mandatory.

Bid security shall be furnished in accordance with the Instructions to Bidders.

NOTICE OF REGISTRATION REQUIREMENT. Bidders are reminded that in order to be considered for bid award, all contractors (including their subcontractors if at a specific cost threshold) **must be actively registered under the Labor Enforcement Fund with the New Mexico Department of Workforce Solutions on the date bids are unconditionally accepted for consideration for bid award and must remain actively registered in order to perform work under this solicitation.** The Contractor selected for award of a contract shall provide documentation to verify compliance with this paragraph prior to execution of a contract.

The Owner reserves the right to reject any or all Bids and to waive information or irregularities in the Bidding.

Questions regarding the bidding documents shall be submitted through T.Y. Lin International, 500 4th Street NW, Suite 403F, Albuquerque, NM 87102 or howard.cake@tylin.com Attention: Howard cake, P.E. and copied to jjones@sjcounty.net.

The last day for questions is close of business (5:30 pm local time) January 12, 2021.

Owner: San Juan County
Diana Chapman, Chief Procurement Officer
Phone: 505-334-4551

NIGP Code: 913.13

LEGAL NOTICE: Publish: **February 14, 2021**

San Juan County
Bridge 8130 Replacement on San Juan County Road 5500
Bid 20-21-05 Re-Bid
Section 2

INSTRUCTIONS TO BIDDERS
TABLE OF CONTENTS

	Page
Article 1 – Defined Terms	1
Article 2 – Copies of Bidding Documents	1
Article 3 – Qualifications of Bidders	1
Article 4 – Site and Other Areas; Existing Site Conditions; Examination of Site; Owner’s Safety Program; Other Work at the Site	2
Article 5 – Bidder’s Representations	3
Article 6 – Pre-Bid Conference	3
Article 7 – Interpretations and Addenda	4
Article 8 – Bid Security	4
Article 9 – Contract Times	5
Article 10 – Liquidated Damages.....	5
Article 11 – Substitute and “Or-Equal” Items.....	5
Article 12 – Subcontractors, Suppliers, and Others	5
Article 13 – Preparation of Bid	6
Article 14 – Basis of Bid	7
Article 15 – Submittal of Bid.....	7
Article 16 – Modification and Withdrawal of Bid.....	8
Article 17 – Opening of Bids	8
Article 18 – Bids to Remain Subject to Acceptance	9
Article 19 – Evaluation of Bids and Award of Contract	9
Article 20 – Bonds and Insurance	10
Article 21 – Signing of Agreement.....	10
Article 22 – Sales and Use Taxes	10
Article 23 - Wage Rate Requirements.....	11
Article 24 - Certification of Bidder Regarding Equal Employment Opportunity.....	11
Article 25 - Compliance with Federal Regulations.....	12
Article 26 - Safety and Health Regulations for Construction.....	13
Article 27 - San Juan County Safety & Compliance Contractor Safety Verification Program.....	13

Article 28 - Extended payment provision.....14
Article 29 - Resident Preference.....14
Article 30 - Registration of Contractor's and Subcontractor's for Public Works Contracts.....14

ARTICLE 1 – DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office* – Refers to the San Juan County Central Purchasing Office.
- 1.02 The Contract Documents contain the provisions required for the construction of the project. Information obtained from an officer, agent, employee of San Juan County, or any other person shall not affect the risks or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the Contract.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.01 The bid and contract documents may be obtained on the San Juan County website. When utilizing the County's website, please complete the Acknowledgement Form that is posted within the Project Manual so you can be listed as a Plan Holder, and will automatically receive addendums, if issued. You are reminded that you are solely responsible for checking the County's website for updates. The website is www.sjcounty.net, choose 'Bids, Proposals, & Vendors' then 'Current Bids/Proposals.' Hard copies of the project will NOT be provided.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder's qualifications to perform the Work, Bidder shall submit with its Bid the following additional information:
- A. Evidence of Bidder's authority to do business in New Mexico.
 - B. Bidder's New Mexico contractor license number.
 - C. Bid Guaranty
 - D. Affidavit of Bidder
 - E. Non-Debarment Certification
 - F. Pay Equity Reporting Acknowledgement
 - G. Subcontractor and Supplier qualification information; coordinate with provisions of Article 12 of these Instructions, "Subcontractors, Supplies, and Others."
 - H. Other required information regarding qualifications.
- 3.02 Each contractor who submits a bid including their sub-contractors at a specific threshold of \$34,000, must be actively registered under the Labor Enforcement Fund with the New Mexico Department of Work Force Solutions on the date bids are unconditionally accepted for consideration for bid award and must remain actively registered in order to perform the work

under this solicitation. The Contractor selected for award of a contract shall provide documentation to verify compliance with this paragraph prior to execution of a contract.

- 3.03 A current Certificate of Insurance must be furnished by the successful bidder in accordance with the supplementary condition of this contract.
- 3.04 Bidders must possess appropriate contractor license or other satisfactory classification as required and regulated by Construction Industries Division, 2550 Cerrillos Road, Santa Fe, NM 87505, (505) 476-4700.
- 3.05 A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.
- 3.06 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.
- 3.07 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

ARTICLE 4 – SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

4.01 *Site and Other Areas*

- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

4.02 *Site Visit and Testing by Bidders*

- A. Bidder shall conduct the required Site visit during normal working hours, and shall not disturb any ongoing operations at the Site.
- B. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.

4.03 *Owner's Safety Program*

- A. Site visits and work at the Site may be governed by an Owner safety program. As the General Conditions indicate, if an Owner safety program exists, it will be noted in the Supplementary Conditions.

4.04 *Other Work at the Site*

- A. Reference is made to Article 8 of the Supplementary Conditions for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 5 – BIDDER’S REPRESENTATIONS

- 5.01 It is the responsibility of each Bidder before submitting a Bid to:
- A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;
 - B. visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
 - C. become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;
 - D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings;
 - E. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
 - F. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder;
 - G. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and
 - H. agree that the submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 6 – PRE-BID CONFERENCE

- 6.01 A pre-Bid conference will be held at 2:00 pm local time on February 23, 2021 in the Public Works Conference room located at 305 S. Oliver Dr., Aztec, NM. A site visit at the north end of the bridge will be held after, if needed. An addendum will be sent out prior to pre-bid meeting with virtual attendance options. Attendance at the Pre-Bid Conference for this project is highly encouraged but is not mandatory to qualify to submit a Bid. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. The Owner will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than seven days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents as deemed advisable by Owner or Engineer.
- 7.03 All questions pertaining to this Bid shall be submitted in writing no later than 7 days prior to Bid opening and shall be directed to:

T.Y. Lin International
Howard Cake
500 4th St. NW #403
Albuquerque, NM 87102
505-730-0882
Howard.cake@tylin.com

Copy to: Jaime Jones, Contract Analyst
San Juan County
213 S. Oliver Dr.
Aztec, NM 87410
505-334-4548
jjones@sjcounty.net

ARTICLE 8 – BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of five [5%] percent of Bidder's maximum Bid price and in the form of a certified check, bank money order, or a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.
- 8.02 If a bid bond is submitted, it shall be issued by a surety company authorized by the State of New Mexico to issue such bonds, and shall be submitted on EJCDC document No. C-430 provided. The attorney executing the bid bond on behalf of the surety company shall affix to the bond a certified and current copy of his or her Power of Attorney.
- 8.03 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.
- 8.04 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Contract or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.
- 8.05 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven days after the Bid opening.

ARTICLE 9 – CONTRACT TIMES

- 9.01 The number of days within which, the Work is to be substantially completed, and completed and ready for final payment, are set forth article 6 of the Unit Price Bid.

ARTICLE 10 – LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in Article 6 of the Unit Price Bid.

ARTICLE 11 – SUBSTITUTE AND “OR-EQUAL” ITEMS

- 11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those “or-equal” or substitute or materials and equipment subsequently approved by Engineer prior to the submittal of Bids and identified by Addendum. No item of material or equipment will be considered by Engineer as an “or-equal” or substitute unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 days prior to the date for receipt of Bids. Each such request shall comply with the requirements of Paragraphs 7.04 and 7.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Engineer’s decision of approval or disapproval of a proposed item will be final. If Engineer approves any such proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.
- 11.02 All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 12.01 Each Contractor who submits a bid shall list on the form provided the name of each sub-contractor proposed to perform project work in excess of \$34,000 (Section 13-4-31 NMSA 1978) along with the Contractor’s address, the nature of the work to be performed by the sub-contractor, an experience statement with pertinent information regarding similar projects and other evidence of qualifications for each sub-contractor, individual or entity if requested by Owner or other relevant information. In addition, the Contractor shall also include on this form the New Mexico Department of Work Force Solutions Registration / Certification number for those proposed sub-contractor’s whose bid amounts are \$60,000.00 and above. The Contractor shall only list one (1) sub-contractor for each category of work. The completed list shall be submitted along with the Contractor’s sealed bid. Any bids submitted which fails to comply with this paragraph will be deemed a non-responsive bid and will not be accepted.

When a bidder enters into a contract and therefore becomes the Contractor, the Owner will promptly inform the Contractor whether or not the Owner, after due investigation, has reasonable objection to any proposed sub-contractor. Failure of the Owner to inform the Contractor promptly of its objections to any proposed sub-contractor shall not constitute notice of no reasonable objection. If Owner or Engineer, after due investigation, has reasonable objection to any proposed sub-contractor, the Owner may request apparent successful bidder

to submit a substitute, in which case apparent successful bidder shall submit an acceptable substitute, bidder's bid price will be increased or decreased by the difference in cost occasion by such substitution and Owner may consider such price adjustment in evaluation bids and making the award

- 12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, or other individuals or entities. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.
- 12.03 In compliance with Public Works Section 13-4-36 C and D, NMSA 1978, substitution of sub-contractor, no Contractor whose bid is accepted shall permit any sub-contract to be voluntarily assigned, transferred or allowed to be performed by anyone other than the original sub-contractor listed in the original bid without the consent of the Owner.
- 12.04 No Contractor whose bid is accepted other than in the Performance Change Order causing changes or deviation from the original contract shall sublet or subcontract any portion of the work in excess of the listing threshold as to which his original bid did not designate a sub-contractor unless:
- A. The Contractor fails to receive a bid from a category of work. Under such circumstances, the Contractor may subcontract. The Contractor shall designate on the bid listing that no bid was received or;
 - B. The Contractor fails to receive more than one bid of a category of work. Under such circumstances, the Contractor may subcontract. The Contractor shall state on the listing form that only one sub-contractor's bid was received, together with the name of the sub-contractor. This designation shall not occur more than one time on the sub-contractor list.
- 12.05 Contractors shall not be required to employ any sub-contractor against whom a Contractor has reasonable objection.
- 12.06 The Per Article 4, Section 13-4-13.1 of NMSA 1978, in order to submit a bid valued at more than \$60,000.00, the Contractor, serving as prime Contractor or not shall be registered with the Department of Labor. Registration forms can be located at www.dws.state.nm.us.

ARTICLE 13 – PREPARATION OF BID

- 13.01 The Bid Form is included with the Bidding Documents.
- A. All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, Bid item, unit price item, and unit price item listed therein.
- 13.02 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.

- 13.03 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The partnership's address for receiving notices shall be shown.
- 13.04 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.05 A Bid by an individual shall show the Bidder's name and official address.
- 13.06 A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.07 All names shall be printed in ink below the signatures.
- 13.08 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.09 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.10 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state of New Mexico.

ARTICLE 14 – BASIS OF BID

14.01 *Unit Price*

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity" (which Owner or its representative has set forth in the Bid Form) for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

14.02 *Allowances*

- A. For cash allowances the Bid price shall include such amounts as the Bidder deems proper for Contractor's overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 13.02.B of the General Conditions.

ARTICLE 15 – SUBMITTAL OF BID

- 15.01 Bids shall be made on the Bid Proposal form that is included in the bidding documents and may be separated from the documents unless otherwise noted in these specifications.

15.02 All Bids must be received no later than March 16, 2021 at 3:00 PM by the Office of Central Purchasing, 213 S. Oliver Dr., Aztec, NM 87410, and shall be enclosed in a sealed plainly marked package with the Project title (and, if applicable, the designated portion of the project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. Bids that are delivered after that date and time will not be accepted and will be returned to the sender unopened. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside as noted below:

Deliver Bids to: San Juan County
Office of Central Purchasing
213 S. Oliver Dr.
Aztec, NM 87410

Mailed Bids should read: (Bidder's Names and Address)
Attn: Sealed Bid Enclosed
Bid No. 20-21-05 Re-Bid
Bridge 8130 Replacement on County Road 5500

15.03 Failure to follow these instructions may result in disqualification of the bid. Any bid forwarded by mail or delivery service which is opened by mistake prematurely as a result of the failure of the Bidder to enclose a sealed bid within a separate mailing envelope may be subject to disqualification.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

16.01 A Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.

16.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 16.01 and submit a new Bid prior to the date and time for the opening of Bids.

16.03 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 – OPENING OF BIDS

17.01 Bids will be opened at 3:00 pm local time on March 16, 2021 in the San Juan County Central Purchasing Conference Room and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner will reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.
- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 19.04 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.
- 19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.
- 19.06 If the contract is to be awarded, a contract may be offered to the lowest responsible bidder submitting an acceptable offer for the work (and applicable Options or Alternative which are selected), so long as the lowest bid is within the amount of funds designated to finance the contract. If the lowest responsive bidder has otherwise qualified, but submitted a bid that was up to 10% in excess of the amount of funds designated to finance the Contract, the lowest bidder may negotiate with the County for a lower total. Such negotiation shall not be permitted if the lowest bid was more than 10% over budgeted funds. NMSA 1978 Section 13-1-105 (Repl. 1992).
- 19.07 New Mexico Department of Work Force Solutions: Labor Enforcement Funds Certification. In order to be considered for bid award, all Contractor's (including their sub-contractors if at a specific cost threshold) must be registered with the Department of Labor Enforcement Fund with the New Mexico Department of Workforce Solutions on the date bids are unconditionally accepted for consideration for bid award and must remain actively registered in order to perform work under this solicitation. The Contractor selected for award of a contract shall provide documentation to verify compliance with this paragraph prior to execution of a contract. Contractors may obtain additional information on the requirements of the Labor

Enforcement Fund Program at www.dws.state.nm.us (Public Works – Public Works Projects – Additional Forms – Labor Enforcement Fund Form) or by calling (505) 841-4405.

ARTICLE 20 – BONDS AND INSURANCE

20.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation.

ARTICLE 21 – SIGNING OF AGREEMENT

21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within ten days thereafter, Owner shall deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

21.02 Upon return of the signed Notice of Award, signed Agreement, and Insurance and Bonds, a Notice to Proceed will be presented to the Contractor for signature, setting the time frame for substantial completion. Until such time that the Notice to proceed has been issued by the County, the Contractor should refrain from performing any work on the project.

ARTICLE 22 – SALES AND USE TAXES

22.01 The New Mexico Procurement Code, N.M.S.A. 1978 §13-1-28 through 13-1-199 (Repl. 1997) (as amended), imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal code, N.M.S.A. 1978, §30-1-1 et seq. (Repl. 1994) (as amended), imposes criminal penalties for illegal bribes, gratuities, and kickbacks. Bidders should carefully consider the consequences of their behavior during the pendency of this solicitation, and should seek the advice of legal counsel when in doubt.

22.02 Certification of Bidder regarding Equal Employment Opportunity. Contractors and their Subcontractors shall comply with this section if applicable and required in the performance of their work. However, bidders are not required to submit a completed certificate with their bid submission.

22.03 Termination. In addition to the grounds for termination set forth elsewhere in the Bid Documents or in the Contract Documents, any contract awarded as a result of the Invitation for Bids may be terminated if sufficient appropriations or authorizations do not exist. The County's decision concerning whether sufficient appropriations or authorizations exist will be final.

22.04 Right to Discontinue Procurement. The County reserves the right to waive minor irregularities in a bid. The County also reserves the right to waive mandatory requirement(s) so long as all responding bidders fail to meet the mandatory requirement(s) and the failure to do so does not otherwise materially affect the procurement. The County reserves the right to cancel this Request For Bids at any time, and to reject any or all bids, or otherwise to proceed in the best interests of the County. This Request For Bids in no manner obligates the County or any of its

agencies to the eventual sale or lease of any product or service, whether explicitly described or implied herein, until confirmed by a written contract and/or Purchase Order.

- 22.05 Ownership of Plans; The Contractor awarded the contract acknowledges that the reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other similar documents shall not be reproduced, copied or duplicated without the express written authorization of the County.
- 22.06 Notice of Extended Payment Provision. This contract allows the owner to make payment within 45 days after submission of an undisputed request for payment.

ARTICLE 23 – WAGE RATE REQUIREMENTS

- 23.01 Wage Rates: Wage Rates are required on this project if the bid amount exceeds \$60,000. Employees of any Contractor or subcontractor participating in the work shall be paid not less than the higher amount of the minimum wage rates of the State of New Mexico as published by the State Labor and Industrial Commission. The Contractor must insure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, or national origin. A copy of the Wage Decision of the New Mexico Department of Workforce Solutions – Public Works Bureau, Decision No. SJ-19-0462-A/H has been issued for the project and is included in bid specifications. Bidders are reminded that all Contractors and their subcontractors must submit certified weekly payroll records biweekly to San Juan County Finance Department, 100 S. Oliver Drive, Aztec, NM 87410, subject to the terms of the New Mexico Public Works Minimum Wage Act.

ARTICLE 24 – CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY

- 24.01 Instructions: This certification is required pursuant to Executive Order 11246, entitled Equal Opportunity, as amended by Executive Order 11375, and as supplemented in DOL regulations (41 CFR Part 60). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the Equal Opportunity Clause; and if so, whether it has filed all compliance reports due under applicable instructions.
- 24.02 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, creed, color, sex, age, national origin or disability. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, sex, age, national origin or disability. Such action shall include, but not limited to, the following: employment, upgrading demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selecting for training including apprenticeship.
 2. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices as provided setting forth provisions of this nondiscrimination clause.

3. The Contractor agrees that, in all solicitation or advertisement for employment placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, creed, color, sex, age, national origin or disability.
4. The Contractor agrees to send to each labor union or representative of workers with which the Contractor has had collective bargaining agreements or other contracts or understandings, a notice advising the labor union or worker's representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor agrees to comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor, and all subsequently issued rules, regulations or relevant orders, relating to equal employment opportunity.
6. The Contractor agrees to furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Contractor's books, records, and account by the contracting agency and the Secretary of Labor for purpose of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event the Contractor's non-compliance with the nondiscrimination clauses of the contract or with any of such 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 contract in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Contractor agrees to include the provisions of paragraphs (1) through (8) in every subcontract or purchase related to the work of the contract unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, or that such provisions will be binding upon each Contractor or vendor. The Contractor agrees to take such action with respect to any subcontract or purchase order as the contracting agency may direct as means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event litigation with a Contractor or vendor as result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

ARTICLE 25 – COMPLIANCE WITH FEDERAL REGULATIONS

- 25.01 The Contractor agrees to comply with any Federal Statutes or Regulations which are applicable to this project including, but not limited to the following:

All labor standards including those relating to the payment of wages, working conditions, Copeland Anti-Kickback Act (18 USC 874), equal employment, and in particular:

[1] The provisions of Title 29 of the Office of the Secretary of Labor of the United States Government, Part 3, entitles "Contractors and Contractors on Public Work Financed in whole or in part by loans or grants from the United States" (29 CFR Part 3);

[2]The provision of 29 CFR Part 5 entitled "Labor Standard Provision Applicable to Contracts Governing Federally Financed and Assisted Construction" as well as the "National Labor Standard Provision Applicable to Non-construction Contracts subject to Contract Work Hours and Safety Standards Act".

[3] Those concerning relocations and related payments to all persons displaced as a result of the project as provided in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601 et seq;

[4] The provisions of 29 CFR Part 1926 OSHA Standards for the Construction Industry and Part 1910 OSHA Standards for General Industry as applicable to the General Contractor and Subcontractors.

[5] The National Environmental Policy Act of 1969, as amended (42 USC 4321 et seq);

[6] The Clean Air Act, as amended (42 USC 11857-1858 a);

[7] The Federal Water Pollution Control Act, as amended (33 USC 1251-1376);

[8] The National Historic Preservation Act of 1966 (16 USC 470 et seq);

[9] The Wild and Scenic Rivers Act (16 USC 1271-1281);

[10] The Endangered Species Act of 1973 (16 USC 1531 et seq);

[11] The Historical and Archaeological Data Preservation Act as amended (16 USC 469 et seq);

[12] Regulations pertaining to the design, construction, and alteration of buildings to accommodate the physically handicapped;

[13] The National Flood Insurance Program;

[14] State Energy conservation Plan issued in compliance with the Energy Policy and conservation Act (P.L. 94-164).

ARTICLE 26 – SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

26.01 In order to protect the lives and health of employees under the contractor and subcontractor, the contractor and subcontractor shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by DOL regulations (29 CFR Part 5).

ARTICLE 27 – ARTICLE 27 – SAN JUAN COUNTY SAFETY & COMPLIANCE CONTRACTOR SAFETY VERIFICATION PROGRAM

27.01 The Contractor awarded a contract under this solicitation will be required to comply with the County's Safety & Compliance Contractor Safety Verification Program. To ensure safe work practices, the County's Safety and Compliance Manager will work closely with the Contractor and his Sub Contractors during construction, and will require completion of the Assessment Questionnaire.

ARTICLE 28 – EXTENDED PAYMENT PROVISION

28.01 This contract allows the Owner to make payment within 45 days after submission of an undisputed request for payment.

ARTICLE 29 – RESIDENT PREFERENCE

29.01 IN-STATE RESIDENT CONTRACTOR PREFERENCE. To be eligible for the 5% resident contractor's preference, the contractor shall include a copy of their certificate with their bid and in-state resident preference number on the Bid Offer Page, pursuant to Section 13-4-2 NMSA 1978. Each Bidder may obtain a New Mexico In-State Resident Contractor Preference Certificate Number through the State of New Mexico, Department of Taxation and Revenue, 505-827-0951.

29.02 RESIDENT VETERAN CONTRACTOR PREFERENCE. To be considered for the 10% resident veteran contractor preference, the contractor shall include a copy of their certificate with their bid and in-state resident veteran preference number on the Bid Offer Page, pursuant to Section 13-4-2 NMSA 1978. Each Bidder may obtain a Resident Veteran Contractor Preference Certificate Number through the State of New Mexico, Department of Taxation and Revenue, 505-827-0951.

ARTICLE 30 – REGISTRATION OF CONTRACTOR'S AND SUBCONTRACTOR'S FOR PUBLIC WORKS CONTRACTS

30.01 In order to submit a bid valued at more than sixty thousand dollars (\$60,000), or to be considered for award of any portion of public works project greater than sixty thousand dollars (\$60,000) the contractor serving as prime contractor, subcontractor, or any tier thereof, shall be registered and obtain a New Mexico Public Works Registration Number. Registration forms can be located at: <http://www.dws.state.nm.us/LaborRelations/LaborInformation/PublicWorks>.

San Juan County
Section 3
Minimum Wage Rates

- (a) The minimum wages to be paid to the various classes of mechanics and laborers engaged by the Contractor and Subcontractors for Work under this Contract including any additional, omitted or changed work, shall not be less than the amount as determined and established by the Labor and Industrial Division of the New Mexico Department of Workforce Solutions as provided by Section 13-4-11, N.M.S.A.1978 and in full force and effect, without exception, on the date of the Contract and during the lifetime of this Contract.
- (b) The minimum wage rates, if any, specified for apprentices shall apply only to persons working with the tools of the trade that they are learning, and under the direct supervision required by law, the number of apprentices in each trade or occupation employed by the Contractor or any Subcontractor shall not exceed the number permitted under the usual practice prevailing between Trade Unions and Employers Association of the respective trades or occupations.
- (c) Extra Work - Minimum Wage. In case San Juan County orders the Contractor to perform extra work or additional work which may make it necessary for the Contractor or any Subcontractor under him to employ, in the performance of such work, any person in any trade or occupation for which no minimum wage rate is specified, San Juan County will include in the Contract Change Order for such extra or additional work the minimum wage rate for such trade or occupation, and insofar as such extra or additional work is concerned, there shall be paid each employee engaged in the work in such trade or occupation, not less than the minimum wage rate included.
- (e) Wage Underpayments and Adjustments. The Contractor agrees that, in case of underpayment of wages to any worker on the Project under this Contract, San Juan County may withhold out of payments due, an amount sufficient to pay such worker the difference between the wages required to be paid under his Contract and the wages actually paid such worker for the total number of hours worked and that San Juan County may disburse such amount so withheld by it, for and on account of the Contractor to the employee to which such amount is due. The Contractor further agrees that the amounts to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by San Juan County pursuant to other provisions of this Contract.

A copy of the New Mexico State Office of the Labor Commissioner Minimum Wage Rates and Apprentices minimum wage scales in effect at the time of the Contract shall be posted or otherwise made available to the Contractor's employees at all times on the job.

A copy of each certified weekly payroll by the Contractor and each Subcontractor shall be provided to San Juan County. These payrolls shall be furnished no later than five working days after each payroll period. Such payrolls shall depict the decision number for this Project and the County in which the work is being performed.

The Contractor and all Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, age, religion, gender, national origin, sexual orientation, spousal affiliation, veteran status, mental or physical disability, or handicap.



LABOR RELATIONS DIVISION
121 Tijeras Ave NE, Suite 3000
Albuquerque, NM 87102
Phone: 505-841-4400
Fax: 505-841-4424

SJ-20-2145-A

WWW.DWS.STATE.NM.US

PUBLIC WORKS PROJECT REQUIREMENTS

As a participant in a Public Works project valued at more than \$60,000 in the state of New Mexico, the following list addresses many of the responsibilities that are defined by statute or regulation to each project stakeholder.

Contracting Agency

- Ensure that all contractors wishing to bid on a Public Works project when the project is \$60,000 or more are actively registered with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> (Contractor Registration) prior to bidding.
- Please submit Notice of Award (NOA) and Subcontractor List(s) to the PWAA website promptly after the project is awarded.
- Please update the Subcontractor List(s) on the PWAA website whenever changes occur.
- All sub-contractors and tiers (excluding professional services) regardless of contract amount must be listed on the Subcontractor List and must adhere to the Public Works Minimum Wage Act.
- Ninety days after project completion please go into the PWAA system and close the project. Only contracting agencies are allowed to close the project. Agents or contractors are not allowed to close projects.

General Contractor

- Provide a complete Subcontractor List and Statements of Intent (SOI) to Pay Prevailing Wages for all contractors, regardless of amount of work, to the contracting agency within 3 (three) days of award.
- Ensure that all subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- Confirm the Wage Rate poster, provided in PWAA, is displayed at the job site in an easily accessible place.
- When the project has been completed, make sure the Affidavits of Wages Paid (AWP) are sent to the contracting agency.
- All subcontractors and tiers (excluding professional services) regardless of contract amount must pay prevailing wages, be listed on the Subcontractor List, and adhere to the Public Works Minimum Wage Act.



LABOR RELATIONS DIVISION
121 Tijeras Ave NE, Suite 3000
Albuquerque, NM 87102
Phone: 505-841-4400
Fax: 505-841-4424

WWW.DWS.STATE.NM.US

Subcontractor

- Ensure that all subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- All subcontractors and tiers (excluding professional services) regardless of contract amount must pay prevailing wages, be listed on the Subcontractor List, and adhere to the Public Works Minimum Wage Act.

Additional Information

Reference material and forms may be found in the New Mexico Department of Workforce Solutions Public Works web pages at: <https://www.dws.state.nm.us/Labor-Relations/Labor-Information/Public-Works>.

CONTACT INFORMATION

Contact the Labor Relations Division for any questions relating to Public Works projects by email at public.works@state.nm.us or call (505) 841-4400.



TYPE "A" - STREET, HIGHWAY, UTILITY & LIGHT ENGINEERING

Effective January 1, 2020

Trade Classification	Base Rate	Fringe Rate
Bricklayer/Block layer/Stonemason	24.46	8.81
Carpenter/Lather	24.63	11.24
Carpenter- Los Alamos County	27.80	13.19
Cement Mason	17.42	6.81
Ironworker	27.00	15.75
Painter- Commercial	17.00	6.88
Plumber/Pipefitter	30.76	11.62
Electricians- Outside Classifications: Zone 1		
Ground man	23.27	12.67
Equipment Operator	33.39	15.35
Lineman/ Technician	39.28	16.91
Cable Splicer	43.21	17.95
Electricians-Outside Classifications: Zone 2		
Ground man	23.27	12.67
Equipment Operator	33.39	15.35
Lineman/ Technician	39.28	16.91
Cable Splicer	43.21	17.95
Electricians-Outside Classifications: Los Alamos		
Ground man	23.94	12.85
Equipment Operator	34.35	15.60
Lineman/ Technician	40.41	17.21
Cable Splicer	44.45	18.28
Laborers		
Group I- Unskilled	12.26	6.22
Group II- Semi-Skilled	12.56	6.22
Group III- Skilled	12.96	6.22
Group IV- Specialty	13.21	6.22
Operators		



Group I	18.79	6.34
Group II	19.72	6.34
Group III	19.82	6.34
Group IV	19.93	6.34
Group V	20.03	6.34
Group VI	20.21	6.34
Group VII	20.37	6.34
Group VIII	20.66	6.34
Group IX	28.16	6.34
Group X	31.41	6.34
Truck Drivers		
Group I-IX	16.45	7.87

NOTE: All contractors are required to pay SUBSISTENCE, ZONE AND INCENTIVE PAY according to the particular trade. Details are located in a PDF attachment at WWW.DWS.STATE.NM.US. Search Labor Relations/Labor Information/Public Works/Prevailing Wage Rates.

For more information about the Subsistence, Zone, and Incentive Pay rates, or to file a wage claim, contact the Labor Relations Division at (505) 841-4400 or visit us online at www.dws.state.nm.us.

BID FORM

Bid 20-21-05 Re-Bid

Bridge 8130 Replacement on San Juan County Road 5500

Bid Date: March 16, 2021

TABLE OF CONTENTS

	Page
Article 1 – Bid Recipient	1
Article 2 – Bidder’s Acknowledgements.....	1
Article 3 – Bidder’s Representations.....	1
Article 4 – Bidder’s Certification.....	2
Article 5 – Basis of Bid	3
Article 6 – Time of Completion.....	5
Article 7 – Attachments to this Bid	5
Article 8 – Defined Terms.....	6
Article 9 – Bid Submittal.....	6

**San Juan County
Section 4
Unit Price Bid**

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

San Juan County
100 S. Oliver Dr
Aztec, NM 87410

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum, Date</u>
_____	_____
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder’s safety precautions and programs.

- E. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- F. Bidder 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 Bidding Documents.
- G. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- H. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- I. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER’S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price:

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
203100	BORROW	CU. YD.	6,800		
203200	UNSUITABLE MATERIAL EXCAVATION	CU. YD.	3,500		
203211	UNSTABLE SUBGRADE STABILIZATION	CU. YD.	1,400		
207000	SUBGRADE PREPARATION	SQ. YD.	5,300		
210002	MAJOR STRUCTURAL EXCAVATION	CU. YD.	283		
210003	MAJOR STRUCTURAL BACKFILL	CU. YD.	1,307		
303000	BASE COURSE	TON	4,060		
407000	ASPHALT MATERIAL FOR TACK COAT	TON	3		
408100	PRIME COAT MATERIAL	TON	13		
416003	MINOR PAVEMENT HMA SP-III	SQ. YD.	6,530		
502060	DRILLED SHAFT FOUNDATION 60" DIAMETER	LIN. FT.	400		
502166	PERMANENT CASING 66" DIAMETER	LIN. FT.	220		
505000	CROSSHOLE SONIC LOGGING CONSULTANT TESTING	EACH	12		
505011	LOW STRAIN INTEGRITY CONSULTANT TESTING	EACH	12		
511000	SUBSTRUCTURE CONCRETE CLASS A	CU. YD.	338		
511070	SUBSTRUCTURE CONCRETE CLASS HPD	CU. YD.	452		
514042	CONCRETE BARRIER RAILINGS 42"	LIN. FT.	490		
518045	PRESTRESSED CONCRETE BRIDGE MEMBER TYPE 45	LIN. FT.	356		
518072	PRESTRESSED CONCRETE BRIDGE MEMBER TYPE 72	LIN. FT.	847		
531001	PERMANENT ANTI-GRAFFITI PROTECTIVE COATING	SQ. YD.	1,011		
536001	EPOXY URETHANE POLYMER CONCRETE BRIDGE DECK OVERLAY	SQ. YD.	1,326		
540060	REINFORCING BARS GRADE 60	LBS.	12,362		
540160	EPOXY COATED REINFORCING BARS GRADE 60	LBS.	107,418		
541000	STRUCTURAL STEEL FOR CONCRETE BRIDGES	LBS.	12,775		
543100	METAL RAILING, PEDESTRIAN	LIN. FT.	485		
560000	ELASTOMERIC BEARING PAD	EACH	24		
562000	BRIDGE JOINT STRIP SEAL	LIN. FT.	106		

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
563099	POLYMER BRIDGE JOINT SEALS	LIN. FT.	196		
601000	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	L.S.	1		
601110	REMOVAL OF SURFACING	SQ. YD.	3,220		
602000	RIPRAP CLASS A	CU. YD.	120		
602020	RIPRAP CLASS C	CU. YD.	1,250		
603100	TEMPORARY SOIL STABILANT	ACRE	1		
604300	GEOGRID REINFORCEMENT	SQ. YD.	340		
606001	SINGLE FACED W-BEAM GUARDRAIL	LIN. FT.	1,190		
606052	END TREATMENT TL-2 END TREATMENT	EACH	5		
606053	END TREATMENT W-BEAM END ANCHOR	EACH	5		
606062	TRANSITION METAL BARRIER TO RIGID BARRIER	EACH	4		
606063	EXISTING BEAM GUARDRAIL TO 31" BEAM GUARDRAIL TRANSITION	EACH	2		
606401	REMOVE AND REINSTALL GUARDRAIL	LIN. FT.	140		
606599	RESETTING OF TCWB	LIN. FT.	720		
606710	TCWB RETAINED BY THE CONTRACTOR (20')	LIN. FT.	360		
607199	REMOVE AND REBUILD FENCE	LIN. FT.	790		
632000	CLASS A SEEDING	ACRE	1		
704700	HOT THERMOPLASTIC PAVEMENT MARKINGS 4"	LIN. FT.	4,800		
107000	ENVIRONMENTAL COMMITMENTS	L.S.	1		
201000	CLEARING AND GRUBBING	L.S.	1		
603281	SWPPP PLAN PREPARATION AND MAINTENANCE	L.S.	1		
618000	TRAFFIC CONTROL MANAGEMENT	L.S.	1		
621000	MOBILIZATION	L.S.	1		
702810	TRAFFIC CONTROL DEVICES FOR CONSTRUCTION	L.S.	1		
Base Bid – Total of all Unit Price Bid Items					\$

Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

a) Lump Sum Price for Base Bid		\$
b) Alternate A – Stacked Stone Feature (Add)		\$
c) Alternate B – 1 Month Bridge Closure (Deduct)		\$
d) Alternate C – 2 Month Bridge Closure (Deduct)		\$
e) Alternate D – 3 Month Bridge Closure (Deduct)		\$
f) Allowances:		
Construction Materials Testing		\$30,000.00
Construction Staking		\$60,000.00
Total Allowances:		\$90,000.00
g) Subtotal – Base Bid (Line a) plus Allowances (Line f)		\$
d) New Mexico Gross Receipts Tax (NMGRT)	6.6875%	\$
e) Base Bid Total – Subtotal plus NMGRT		\$

Dollars

(Base Bid Total amount written in words)

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete within 330 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions.
- 6.02 In addition, Bidder agrees to complete or correct all punch list items attached to the Certificate of Substantial Completion within 30 consecutive calendar days following the date of Substantial Completion.
- 6.03 As provided in the Special Provisions, Bidder further agrees to pay as liquidated damages the amount of \$1,500 for each consecutive calendar day beyond the agreed time that Substantial Completion is not achieved and \$1,500 for each consecutive calendar day beyond the agreed time that all punch list items are not completed or corrected.

6.04 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. Evidence of Bidder’s authority to do business in New Mexico.
 - B. Bidder’s New Mexico contractor license number.
 - C. Required Bid security in the form of 5%;
 - D. List of Proposed Subcontractors;
 - E. Bid Guaranty
 - F. Affidavit of Bidder
 - G. Non-Debarment Certification
 - H. Pay Equity Reporting Acknowledgement
 - I. Subcontractor and supplier qualification information; coordinate with provisions of Article 12 of these instructions, “Subcontractors, Suppliers, and Others.”
 - J. Bidder’s Qualification Statement with supporting information
 - K. Resident or Veteran Contractor Certificate (if applicable)

ARTICLE 8 – DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

BIDDER:

By:

[Signature] _____

[Printed name] _____

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

[Signature] _____

[Printed name] _____

Title: _____

Submittal Date: _____

Address for giving notices:

Telephone Number:

Fax Number:

Contact Name and e-mail address:

New Mexico State Contractor License No.:

New Mexico Workforce Solutions Registration No.:

Federal Employer Identification No. (FEIN #):

New Mexico Resident/Veteran Preference No.:

QUALIFICATIONS STATEMENT

THE INFORMATION SUPPLIED IN THIS DOCUMENT IS CONFIDENTIAL TO THE EXTENT
PERMITTED BY LAWS AND REGULATIONS

1. SUBMITTED BY:

Official Name of Firm:

Address:

2. SUBMITTED TO:

3. SUBMITTED FOR:

Owner:

Project Name:

TYPE OF WORK:

4. CONTRACTOR'S CONTACT INFORMATION

Contact Person:

Title:

Phone:

Email:

EJCDC® C-451, Qualifications Statement.

Copyright © 2013 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

5. **AFFILIATED COMPANIES:**

Name: _____
Address: _____

6. **TYPE OF ORGANIZATION:**

SOLE PROPRIETORSHIP

Name of Owner: _____

Doing Business As: _____

Date of Organization: _____

PARTNERSHIP

Date of Organization: _____

Type of Partnership: _____

Name of General Partner(s): _____

CORPORATION

State of Organization: _____

Date of Organization: _____

Executive Officers:

- President: _____

- Vice President(s): _____

- Treasurer: _____

- Secretary: _____

LIMITED LIABILITY COMPANY

State of Organization:

Date of Organization:

Members:

JOINT VENTURE

Sate of Organization:

Date of Organization:

Form of Organization:

Joint Venture Managing Partner

- Name:

- Address:

Joint Venture Managing Partner

- Name:

- Address:

Joint Venture Managing Partner

- Name:

- Address:

7. LICENSING

Jurisdiction: _____

Type of License: _____

License Number: _____

Jurisdiction: _____

Type of License: _____

License Number: _____

8. CERTIFICATIONS

CERTIFIED BY:

Disadvantage Business Enterprise: _____

Minority Business Enterprise: _____

Woman Owned Enterprise: _____

Small Business Enterprise: _____

Other (_____): _____

9. BONDING INFORMATION

Bonding Company: _____

Address: _____

Bonding Agent: _____

Address: _____

Contact Name: _____

Phone: _____

Aggregate Bonding Capacity: _____

Available Bonding Capacity as of date of this submittal: _____

EICDC' C-451, Qualifications Statement.

Copyright © 2013 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

10. FINANCIAL INFORMATION

Financial Institution: _____

Address: _____

Account Manager: _____

Phone: _____

INCLUDE AS AN ATTACHMENT AN AUDITED BALANCE SHEET FOR EACH OF THE
LAST 3 YEARS

11. CONSTRUCTION EXPERIENCE:

Current Experience:

List on **Schedule A** all uncompleted projects currently under contract (If Joint Venture list each participant's projects separately).

Previous Experience:

List on **Schedule B** all projects completed within the last 5 Years (If Joint Venture list each participant's projects separately).

Has firm listed in Section 1 ever failed to complete a construction contract awarded to it?

YES NO

If YES, attach as an Attachment details including Project Owner's contact information.

Has any Corporate Officer, Partner, Joint Venture participant or Proprietor ever failed to complete a construction contract awarded to them in their name or when acting as a principal of another entity?

YES NO

If YES, attach as an Attachment details including Project Owner's contact information.

Are there any judgments, claims, disputes or litigation pending or outstanding involving the firm listed in Section 1 or any of its officers (or any of its partners if a partnership or any of the individual entities if a joint venture)?

YES NO

If YES, attach as an Attachment details including Project Owner's contact information.

12. SAFETY PROGRAM:

Name of Contractor's Safety Officer: _____

Include the following as attachments:

Provide as an Attachment Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) OSHA No. 500- Log & Summary of Occupational Injuries & Illnesses for the past 5 years.

Provide as an Attachment Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) list of all OSHA Citations & Notifications of Penalty (monetary or other) received within the last 5 years (indicate disposition as applicable) - IF NONE SO STATE.

Provide as an Attachment Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) list of all safety citations or violations under any state all received within the last 5 years (indicate disposition as applicable) - IF NONE SO STATE.

Provide the following for the firm listed in Section V (and for each proposed Subcontractor furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) the following (attach additional sheets as necessary):

Workers' compensation Experience Modification Rate (EMR) for the last 5 years:

YEAR	_____	EMR	_____
YEAR	_____	EMR	_____
YEAR	_____	EMR	_____
YEAR	_____	EMR	_____
YEAR	_____	EMR	_____

Total Recordable Frequency Rate (TRFR) for the last 5 years:

YEAR	_____	TRFR	_____
YEAR	_____	TRFR	_____
YEAR	_____	TRFR	_____
YEAR	_____	TRFR	_____
YEAR	_____	TRFR	_____

Total number of man-hours worked for the last 5 Years:

YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____
YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____
YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____
YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____
YEAR	_____	TOTAL NUMBER OF MAN-HOURS	_____

Provide Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) Days Away From Work, Days of Restricted Work Activity or Job Transfer (DART) incidence rate for the particular industry or type of Work to be performed by Contractor and each of Contractor's proposed Subcontractors and Suppliers) for the last 5 years:

YEAR	_____	DART	_____
YEAR	_____	DART	_____
YEAR	_____	DART	_____
YEAR	_____	DART	_____
YEAR	_____	DART	_____

13. EQUIPMENT:

MAJOR EQUIPMENT:

List on Schedule C all pieces of major equipment available for use on Owner's Project.

I HEREBY CERTIFY THAT THE INFORMATION SUBMITTED HEREWITH, INCLUDING ANY ATTACHMENTS, IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

NAME OF ORGANIZATION: _____

BY: _____

TITLE: _____

DATED: _____

NOTARY ATTEST:

SUBSCRIBED AND SWORN TO BEFORE ME

THIS _____ DAY OF _____, 20____

NOTARY PUBLIC - STATE OF _____

MY COMMISSION EXPIRES: _____

REQUIRED ATTACHMENTS

1. Schedule A (Current Experience).
2. Schedule B (Previous Experience).
3. Schedule C (Major Equipment).
4. Audited balance sheet for each of the last 3 years for firm named in Section 1.
5. Evidence of authority for individuals listed in Section 7 to bind organization to an agreement.
6. Resumes of officers and key individuals (including Safety Officer) of firm named in Section 1.
7. Required safety program submittals listed in Section 13.
8. Additional items as pertinent.

SCHEDULE A

CURRENT EXPERIENCE

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				

SCHEDULE B

PREVIOUS EXPERIENCE (Include ALL Projects Completed within last 5 years)

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				

SCHEDULE B

PREVIOUS EXPERIENCE (Include ALL Projects Completed within last 5 years)

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (Name and Address):

SURETY (Name, and Address of Principal Place of Business):

OWNER (Name and Address):

BID

Bid Due Date:

Description (Project Name— Include Location):

BOND

Bond Number:

Date:

Penal sum

\$

(Words)

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

(Seal)

(Seal)

Bidder's Name and Corporate Seal

Surety's Name and Corporate Seal

By:

Signature

By:

Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest:

Signature

Attest:

Signature

Title

Title

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

San Juan County
Bid Guaranty

Control Number ('CN'): F100290

BIDDER: _____ TELEPHONE: () _____
ADDRESS: _____

SURETY: _____
SURETY BUSINESS ADDRESS: _____

KNOWN ALL MEN by these presents that the Surety having its registered office at the above address are bound unto the San Juan County in the sum of five percent (5%) of the Total Bid Amount as shown on the Project Bid Schedule for which payment well and truly to be made to the San Juan County the Surety binds itself, its successors and assigns by these presents.

The Surety undertakes to pay the San Juan County up to the above amount upon receipt of the County's first written demand, without the County having to substantiate its demand, precluded in its demand the County will note that the amount claimed by the County is due to the Bidder failing to return the signed Contract Bonds within fifteen (15) Days of receiving the Contract. The Guaranty will remain in for up to 60 Days after Bid Opening or as it may be extended by the County, notice of which extension(s) to the Surety is hereby waived.

San Juan County
Affidavit of Bidder

BIDDER: _____ TELEPHONE: () _____
ADDRESS: _____

The Bidder shall execute this Certification of Bidder. I _____ hereby affirm per 23 C.F.R. § 635.112(f) (2009) and as a condition to the County's execution of this Contract that I have not either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the Bid for this Contract.

Further affiant sayeth not.

Title: _____

Bidder (print): _____

Bidder Signature: _____

STATE OF _____)

COUNTY OF _____)

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS:

_____ day of _____ 2021

Notary Public

My Commission Expires: _____

Before Bid Opening, the Bidder shall submit this Affidavit of Bidder as part of the bid package.

Failure to comply with the submission of the Affidavit of Bidder shall result in the Bidder's Bid being rejected as non-responsive.

San Juan County
Non-Debarment Certification

Control Number ('CN'): F100290

BIDDER: _____ TELEPHONE: () _____
ADDRESS: _____

The Federal Highway Administration suspends or debar contractors to protect taxpayer dollars and the NMDOT is required to Award Contracts to responsible Bidders, The submission of the Bid is the Bidder's certification that neither it nor its principals are presently suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Project by any federal department or agency. The Bidder further agrees that if it is the lowest Responsible Bidder and awarded the Contract then it shall comply with the following:

- 1, The Contractor shall verify through the SAM.gov website at <https://www.sam.gov/portal/SAM/###11> that its Subcontractor(s), at any tiers), is not presently suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Project. The result of this verification shall be provided in the COUNTY's permission to subcontract request form number A-1086 and A-1087; and
2. If circumstances change to render this certification inaccurate then the contractor shall provide the changed circumstances immediately in writing to the Project Manager,

If the Contractor knowingly makes a false certification the COUNTY may take available actions under the Contract,

Failure to acknowledge the terms and conditions above shall render the Bid non-responsive and the Bid shall be rejected.

I acknowledge

San Juan County
Pay Equity Reporting Acknowledgement
Control Number ("CN"): F100290

BIDDER: _____ TELEPHONE: () _____
ADDRESS: _____

Pre-Award

The State of New Mexico requires the lowest Responsible Bidder to, in order to contract with Executive Branch Agencies, including the COUNTY, comply with Executive Order 2009-049, To comply with the Executive Order, after receipt of the notice of preliminary award of contract, the lowest Responsible Bidder shall submit per the notice of preliminary award of contract either form PE10-249 or PE250 depending on its number of employees at the time it receives the notice of preliminary award of contract.

Failure of the lowest Responsible Bidder to comply with this Pay Equity Reporting Acknowledgement may constitute just cause for cancellation of the Award and the forfeiture of the Bid Guaranty.

Exemptions exist regarding compliance with the Executive Order. The Executive Order and required forms can be obtained from the following link:

http://www.generalservices.state.nm.us/statepurchasing/pay_equity.asp

Post-Award

If Contract Time extends beyond one (1) year from the date of the Notice to Proceed, then within ten Days of the annual anniversary date of the Notice to Proceed the Contractor shall submit to the Project Manager an updated form PE10-249 or PE250 depending on the number of employees it has at that time.

If at the expiration of Contract Time more than 180 Days has elapsed since submittal of the last PE 10-249 or PE250, the Contractor shall submit to the Project Manager an updated form PE 10-249 or PE250.

If a Subcontractor, at any tier performs ten percent or more of the Total Original Contract Amount and has ten or more employees or eight (8) employees in the same job classification then the Contractor shall submit to the Project Manager the PE 10-249 or PE250. The Contractor shall submit the appropriate form with the permission to subcontract package forms A-1086 or A-1087.

If a Subcontractor, at any tier, performs ten percent or more of the Total Original Contract Amount and during the performance of this Work grows to have ten or more employees or eight (8) employees in the same job classification then the Contractor shall immediately submit form PE 10-249 or PE250.

Subsequent form PE 10-249 or PE250 submittals, by the Contractor for its Subcontractors, at any tier, shall be due yearly on the anniversary date of the Project Manager's approval of the permission to subcontract package.

Failure of the Contractor to comply with this Pay Equity Reporting Acknowledgement shall result in the NMDOT exercising its remedies under the Contract.

I acknowledge

**CERTIFICATION OF BIDDER REGARDING
EQUAL EMPLOYMENT OPPORTUNITY**

Instructions: This certification is required pursuant to Executive Order 11246, entitled Equal Opportunity, as amended by Executive Order 11375, and as supplemented in DOL regulations (41 CFR Part 60). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the Equal Opportunity Clause; and if so, whether it has filed all compliance reports due under applicable instructions.

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, creed, color, sex, age, national origin or disability. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, sex, age, national origin or disability. Such action shall include, but not limited to, the following: employment, upgrading demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selecting for training including apprenticeship.
2. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices as provided setting forth provisions of this nondiscrimination clause.
3. The Contractor agrees that, in all solicitation or advertisement for employment placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, creed, color, sex, age, national origin or disability.
4. The Contractor agrees to send to each labor union or representative of workers with which the Contractor has had collective bargaining agreements or other contracts or understandings, a notice advising the labor union or worker's representative of the Contractors' commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor agrees to comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor, and all subsequently issued rules, regulations or relevant orders, relating to equal employment opportunity.
6. The Contractor agrees to furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Contractor's books, records, and account by the contracting agency and the Secretary of Labor for purpose of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event the Contractor's non-compliance with the nondiscrimination clauses of the contract or with any of such 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 contract in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Contractor agrees to include the provisions of paragraphs (1) through (8) in every subcontract or purchase related to the work of the contract unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, or that such provisions will be binding upon each Contractor or vendor. The Contractor agrees to take such action with respect to any subcontract or purchase order as the contracting agency may direct as means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event litigation with a Contractor or vendor as result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

COMPLIANCE WITH FEDERAL REGULATIONS

The Contractor agrees to comply with any Federal Statutes or Regulations which are applicable to this project including, but not limited to the following:

All labor standards including those relating to the payment of wages, working conditions, Copeland Anti-Kickback Act (18 USC 874), equal employment, and in particular:

- [1] The provisions of Title 29 of the Office of the Secretary of Labor of the United States Government, Part 3, entitles "Contractors and Contractors on Public Work Financed in whole or in part by loans or grants from the United States" (29 CFR Part 3);
- [2] The provision of 29 CFR Part 5 entitled "Labor Standard Provision Applicable to Contracts Governing Federally Financed and Assisted Construction" as well as the "National Labor Standard Provision Applicable to Non-construction Contracts subject to Contract Work Hours and Safety Standards Act".
- [3] Those concerning relocations and related payments to all persons displaced as a result of the project as provided in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601 et seq;
- [4] The provisions of 29 CFR Part 1926 OSHA Standards for the Construction Industry and Part 1910 OSHA Standards for General Industry as applicable to the General Contractor and Subcontractors.
- [5] The National Environmental Policy Act of 1969, as amended (42 USC 4321 et seq);
- [6] The Clean Air Act, as amended (42 USC 11857-1858 a);
- [7] The Federal Water Pollution Control Act, as amended (33 USC 1251-1376);
- [8] The National Historic Preservation Act of 1966 (16 USC 470 et seq);
- [9] The Wild and Scenic Rivers Act (16 USC 1271-1281);
- [10] The Endangered Species Act of 1973 (16 USC 1531 et seq);
- [11] The Historical and Archaeological Data Preservation Act as amended (16 USC 469 et seq);
- [12] Regulations pertaining to the design, construction, and alteration of buildings to accommodate the physically handicapped;
- [13] The National Flood Insurance Program;
- [14] State Energy conservation Plan issued in compliance with the Energy Policy and conservation Act (P.L. 94-164).

SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

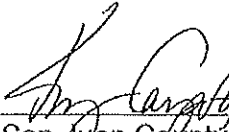
In order to protect the lives and health of employees under the contractor and subcontractor, the contractor and subcontractor shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by DOL regulations (29 CFR Part 5).



Safety & Compliance Verification Program

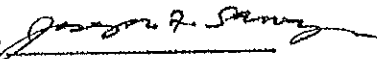
County Policy Statement

Contractors and subcontractors must comply with all applicable federal, state and county laws, ordinances, and guidelines for the health and safety of employees when performing construction work for San Juan County. The San Juan County Safety and Compliance Contractor Safety Verification Program will require contractors and subcontractors to demonstrate the initiation, maintenance, and supervision of all safety precautions and programs in connection with a construction project. The personal safety and health of contractors' and subcontractors' employees is of primary importance, and the prevention of occupationally induced injuries and illnesses is of such consequence that it will be given precedence over operating productivity whenever necessary.


OCT - 3 2011
San Juan County Executive Officer


Safety and Compliance Manager

APPROVED AS TO FORM
SAN JUAN COUNTY ATTORNEY

BY: 

STANDARD PRACTICE INSTRUCTION**DATE:** _____**SUBJECT:** Contractor Safety Verification Program**REGULATORY STANDARD:** All applicable Federal, State and Local Safety and Health regulatory requirements including but not limited to: OSHA - 29 CFR.**BASIS:** It is the responsibility of the host General Contractor to ensure the safety of all workers conducting business on the site. When a General Contractor arranges to have employees of another employer (sub-contractors) perform work that involves activities that may put personnel at risk, the General Contractor must inform the sub-contractor that the workplace contains specific hazards and that the work to be done is permitted only if all workers have the proper training, equipment and work conditions to accomplish the task(s) in a safe manner.**GENERAL:** The Contractor will ensure that safe work practices are used by Contractor personnel to provide for the control of hazards during operations such as lockout / tagout, confined space entry, welding, trenching, walking/working surfaces or piping, and general safety within our facilities. At the request of the County, the Contractor shall provide information regarding the Contractor's safety performance and programs to ensure that occupational safety and health policies have been established and are being followed.**RESPONSIBILITY:** The Contractor shall be responsible for complying with this program, and the Safety and Compliance Manager will monitor the Contractor's compliance.**Contents of the Contractor Safety Verification Program**

1. **Written Program.**
2. **Statement of Policy.**
3. **Routine Contractor Compliance Inspections.**
4. **Contractor Safety Meetings.**
5. **Specific Safety Standards Requiring Contractor Safety Compliance.**
6. **Contractor Training Compliance.**
7. **Contractor Safety Questionnaire.**

San Juan County Contractor Safety Verification Program

1. Written Program. San Juan County may review and evaluate this standard practice instruction:

- On an annual basis
- When changes occur to 29 CFR that prompt revision of this document
- When facility operational changes occur that require a revision of this document
- When there is an accident or close-call that relates to this area of safety
- When changes occur to related document that prompts a revision of this document; and/or
- Anytime the procedures fail

Effective implementation of this program requires support from all levels of Contractor management. This written program will be communicated to all personnel.

2. Statement of Policy. This policy is designed to establish a process to assist Contractors to accomplish desired job tasks without compromising the safety and health of employees at the designated site. The Contractor must assure that all employees and sub-contractors: 1) are trained to perform the job safely, 2) can recognize the hazards related to the job, and 3) are knowledgeable of other applicable provisions of Federal, State and Local safety and health regulatory requirements.

2.1 Initiation of work. Prior to the initiation of the Contractors' work at the site all contract employers will be informed of the applicable provisions of the facility emergency action plan and all other required information as required by relevant Federal, State and Local safety and health regulations.

3. Contractor Disclosure. As a means to assist contract employees to follow the safety rules of the facility, including safe work practices required by relevant regulations and policies, the following criteria and information relating to the Contractor may be reviewed by the Safety Compliance Manager.

3.1 Information relating to the Contractor's safety performance and programs;

3.2 Methods of informing the contractor, sub-contractors, architect / engineer and San Juan County personnel of known potential hazards related to the Contractor's work and applicable provisions of the facility emergency action plan;

3.3 Safe work practices to control the entrance, presence and exit of any persons in covered process areas, or other areas where known hazards exist;

3.4 Evaluation of Contractor performance in complying with specific safety standards;

3.5 Contract employee injury and illness logs related to safety standards (see section 8);

3.6 A list of unique hazards presented by Contractors' work or potential hazards generated by the Contractor in the workplace that are reported to San Juan County, such as: use of hazardous chemicals, excessive noise or dust generation, etc.

4. Routine Contractor Compliance Inspections. Routine Contractor compliance inspections will be conducted periodically when contractors are on site. The inspection will be made to insure working conditions conform to the best management practices regarding Contractor safety compliance.

4.1 Inspection team composition. The Contractor inspection team may be comprised of representatives of San Juan County and the Contractor.

4.2 Inspection Intervals. The Safety and Compliance Manager will coordinate inspection dates and times with all assigned inspection team members. The team may conduct inspections on a monthly basis or more frequently as needed while work is in progress.

4.3 Inspection report. The Safety and Compliance Manager will develop a Contractor safety report based on the inspection items noted during the inspection. **Imminent danger situations will be immediately addressed with the personnel responsible for correcting deficiencies and documented on the inspection report.** The following items will be accomplished:

4.3.1 The report will be distributed immediately to personnel responsible for correcting deficiencies noted during the inspection. A copy will also be given to the County Contract Administrator (the person designated by the County to administer the Contract for the project).

4.3.2 The report will be distributed to all supervisors and key management personnel affected by the Contractor's operation. Supervisors will brief the results to all employees under their control. A copy of the report will be posted in a conspicuous place for review.

4.3.3 The Safety and Compliance Manager will develop a report of deficiencies noted to determine jobs/areas that have high incidence Contractor non-compliance. These areas will be emphasized during future inspections and meetings.

4.3.4 Any deficiencies noted shall be immediately corrected by the Contractor. Corrective actions will be tracked to completion.

5. Contractor Safety Meetings.

5.1 Contractor meeting agendas. The General Contractor may develop agendas serving various topics of importance to the Contractor Safety Verification Program.

5.2 Contractor meeting schedules. Contractor safety meetings will be conducted at least once a month or on an "as needed" basis, and when operational changes to equipment, facilities, or the job occurs that impact the Contractor Safety Verification Program.

5.3 Administration update meetings. Contractor safety topics will be included in the agenda of selected staff meetings. The Safety and Compliance Manager will keep the County Contract Administrator informed of Contractor safety performance developments should issues arise.

6. Specific Safety Standards Requiring Contractor Safety Compliance. The following standards will be reviewed if the Contractor engages in activities that could fall under the jurisdiction of the specific standard:

APPLICABLE OSHA STANDARDS: Below are listed a sampling of OSHA Standards that require Contractor Safety Compliance in specific areas. The Contractor must determine any other standards that relate to specific safety conditions for the project. Please check the appropriate standards that will apply to the job:

<input type="checkbox"/> 29 CFR 1910.119	Process Safety
<input type="checkbox"/> 29 CFR 1910.120	HAZWOPER
<input type="checkbox"/> 29 CFR 1910.Subpart E	PPE
<input type="checkbox"/> 29 CFR 1910.146	Confined Space
<input type="checkbox"/> 29 CFR 1910.147	Lockout Tagout
<input type="checkbox"/> 29 CFR 1910.178	Powered Industrial Trucks
<input type="checkbox"/> 29 CFR 1910.252	Welding Safety
<input type="checkbox"/> 29 CFR 1910.1200	HAZCOM
<input type="checkbox"/> 29 CFR 1926 Subpart M	Fall Protection
<input type="checkbox"/> 29 CFR 1926 Subpart N	Cranes, Derricks and Hoist
<input type="checkbox"/> 29 CFR 1926 Subpart Q	Concrete and Masonry
<input type="checkbox"/> 29 CFR 1926 Subpart R	Steel Erection
<input type="checkbox"/> 29 CFR 1926 Subpart P	Excavations
<input type="checkbox"/> 29 CFR 1926 Subpart L	Scaffolding
<input type="checkbox"/> 29 CFR 1926 Subpart G	Signs, signals, barricades
<input type="checkbox"/> List additional standards	

7. Contractor Training Compliance. All Contractors will ensure that their employees are properly trained about known fire, explosion and / or toxic hazards, uncontrolled energy, confined spaces, and any other hazard(s) related to their jobs.

7.1 Contractors used by San Juan County are required to provide training to their employees in the work practices necessary for their specific job. Additionally, San Juan County, in coordination with the Contractor, may conduct job hazard analyses to identify, and evaluate and control processes involving highly hazardous chemicals.

7.2 Whenever there are outside contractors present, coordination with the General Contractor is mandatory. For example, the General Contractor will inform the subcontractor (and vice versa) when equipment cannot be touched, re-energized or restarted.

7.3 Safe working practices on site remain the responsibility of the General Contractor. Proper understanding and practice of working safely can be determined by observation, interviews with employees (contractors, subcontractors, or contract employees), and OSHA reports. Any reports generated as a result of an incident shall be provided to the Safety and Compliance Manager.

7.4 Contractors used by San Juan County must:

7.4.1 Ensure that their employees are trained in safe work practices needed to perform the job.

7.4.2 Ensure their employees are instructed in the known potential fire, explosion, or toxic release hazards related to the job and the applicable provisions of the facility emergency action plan.

7.4.3 Document that their employees have received the required training.

7.4.4 Ensure that their employees follow the project safety rules and work practices.

7.4.5 Advise San Juan County of unique hazards presented by the Contractor's work.

8. Contractor Safety Questionnaire. The following questionnaire will be used to provide an initial assessment of the scope of a Contractors Safety Program (see next page).

PURPOSE: The purpose of this questionnaire is to provide San Juan County with necessary information about the Contractor's safety program. All items must be completed.

Company Name: _____

Address: _____

Safety Director: _____
 (Person responsible for safety)

Phone #: _____

FAX #: _____

Email: _____

1. Accident/Injury Experience

Using last year's OSHA 300 Log or Worker's Compensation Documentation, fill in the following:

A. Number of recordable injuries/illnesses _____

B. Number of restricted work days _____

C. Number of lost work days _____

D. Number of fatalities _____

E. Employee hours worked last year _____

F. Number of injuries/illnesses requiring hospitalization _____

2. Safety Program

A. Does your company have a written safety program?

Yes _____ No _____

Is the program revised/updated annually?

Yes _____ No _____

B. Does your written program contain a statement that your company abides by all federal (OSHA), state and local rules and regulations relating to safe work practices?

Yes _____ No _____

C. Do you have a new hire orientation program pertaining to safety training?

Yes _____ No _____

D. Does it include any training on the following? (If your company has a handbook, please submit a copy). Mark all that apply

Head Protection _____

Eye Protection _____

Hearing Protection _____

Respiratory Protection _____

Emergency Procedures _____

Hazardous Substances _____

Trench and Evacuation _____

Barricades _____

- Safety Belts & Lifelines or Fall Protection ____
- Scaffolding ____
- Housekeeping ____
- Fire Protection ____
- Hand Protection ____
- Confined Space Entry ____
- Electrical Safety ____
- Rigging and Crane Safety ____
- Hand and Power ____
- Tool Safety ____
- Others ____

E. Do you have a foreman safety training program?
 Yes ____ No ____

F. Do you conduct regular safety meetings?
 Yes ____ No ____
 How often? _____

G. Are records of the training kept on site?
 Yes ____ No ____

H. Do you generate accident investigation reports?
 Yes ____ No ____

I. Do you perform project safety inspections?
 Yes ____ No ____

Who conducts them? Name _____

Job Title _____

How often? _____

3. Lockout/Tagout

A. Does the work that you are contracting for involve any "Lockout/Tagout" situations?
 Yes ____ No ____

If yes, please submit a copy of your written Lockout/Tagout procedures.

4. Hazard Communication

A. Does the work that you are contracting for, involve the use of any "Hazardous Substances"?
 Yes ____ No ____

If yes, please submit a copy of your written hazard communication program and material safety data sheets for any hazardous substance that you will be using in your work.

5. Confined Spaces

A. Does the job involve working in a "Confined Space"?
Yes _____ No _____

B. If yes, include your work plan, copies of training certification for the list of employees, entry permit and who will be in the permit-required confined space.

6. Elevated Work and Fall Protection

A. Does the work that you are contracting for involve any "Elevated Work"?
Yes _____ No _____

If yes, please submit a copy of your fall protection and elevated work policy and procedures.

7. Powered Industrial Vehicles

A. Does the work that you are contracting for, involve the use of any powered industrial vehicles? (i.e., fork trucks, highlifts, etc.)
Yes _____ No _____

B. Have designated people been trained and certified on such?
Yes _____ No _____

C. Are all certified drivers current on their recertification?
Yes _____ No _____

9. Key Personnel

List the key on-site people for this project.

Name: _____
Title: _____
Projects 1. _____
2. _____
3. _____

Name: _____
Title: _____
Projects 1. _____
2. _____
3. _____

Recommendations: _____

Comments: _____

For use by San Juan County

Approved *Yes ____ No ____

I certify that I have conducted a review of the information contained in this questionnaire.

* Further detail on attachment: Yes ___ No__

Name: _____ Signature: _____

Title: _____ Date: _____ Time: _____

ASSESSMENT QUESTIONNAIRE RETENTION INFORMATION

Permanent Retention File: _____ Location: _____

Date Filed: _____ Filed By: _____



NOTICE OF AWARD

OWNER: COUNTY OF SAN JUAN
213 S. Oliver Drive
Aztec, NM 87410

DATE: TBD

PROJECT NO:

CONTRACTOR:

PROJECT:

The Owner has considered the bid submitted by you for the above described work in response to its advertisement for bids dated TBD and instruction to bidders.

You are hereby notified that your bid has been accepted for the above described project in the amount shown:

Lump Sum Base Bid Amount:
Gross Receipt Taxes:
Total Bid Amount:

You are required by the contract documents to execute the agreement and furnish the required certificate of insurance, performance bond, and material & labor bond **within ten (10) calendar days** from date of this notice to you.

If you fail to execute said agreement **within ten (10) calendar days** from the date of this notice, said owner will be entitled to consider all your rights arising out of the owners acceptance of your bid as abandoned. The owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the owner.

CONTRACTOR:

OWNER:

CONSTRUCTION COMPANY

COUNTY OF SAN JUAN

BY: _____

BY: _____

TITLE: _____

**DIANA CHAPMAN,
CHIEF PROCUREMENT OFFICER**

DATE: _____

**RETURN SIGNED COPY TO SAN JUAN COUNTY
OFFICE OF CENTRAL PURCHASING**



NOTICE TO PROCEED

OWNER: COUNTY OF SAN JUAN
213 S. Oliver Drive
Aztec, NM 87410

DATE: TBD

PROJECT NO:

CONTRACTOR:

PROJECT:

The Contractor is hereby notified to commence work in accordance with the agreement dated TBD, and the Contractor is required to complete the above referenced project within **TBD calendar days** from the date of issuance of the Notice to Proceed.

An acknowledgement copy of this Notice to Proceed must be returned to the Owner.

CONTRACTOR:

OWNER:

CONSTRUCTION COMPANY

COUNTY OF SAN JUAN

BY: _____

BY: _____

TITLE: _____

DIANA CHAPMAN,
CHIEF PROCUREMENT OFFICER

DATE: _____

RETURN SIGNED COPY TO SAN JUAN COUNTY
OFFICE OF CENTRAL PURCHASING

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

THIS AGREEMENT is by and between San Juan County ("Owner") and

("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

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

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Replacement of the bridge crossing the San Juan River on County Road 5500 as well as the roadway improvements, earthwork, riprap, striping, signing, and other related improvements as shown on the plans.

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Works has been designed by T.Y. Lin International.
3.02 The Owner has retained T.Y. Lin International ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Contract Times: Days*

A. The Work will be substantially completed within 330 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 30 days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. 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 **\$1,500.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,500.00** for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

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: \$90,000.00.

All specific cash 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
203100	BORROW	CU. YD.	6,800		
203200	UNSUITABLE MATERIAL EXCAVATION	CU. YD.	3,500		
203211	UNSTABLE SUBGRADE STABILIZATION	CU. YD.	1,400		
207000	SUBGRADE PREPARATION	SQ. YD.	5,300		
210002	MAJOR STRUCTURAL EXCAVATION	CU. YD.	283		
210003	MAJOR STRUCTURAL BACKFILL	CU. YD.	1,307		
303000	BASE COURSE	TON	4,060		
407000	ASPHALT MATERIAL FOR TACK COAT	TON	3		
408100	PRIME COAT MATERIAL	TON	13		
416003	MINOR PAVEMENT HMA SP-III	SQ. YD.	6,530		
502060	DRILLED SHAFT FOUNDATION 60" DIAMETER	LIN. FT.	400		
502166	PERMANENT CASING 66" DIAMETER	LIN. FT.	220		

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
505000	CROSSHOLE SONIC LOGGING CONSULTANT TESTING	EACH	12		
505011	LOW STRAIN INTEGRITY CONSULTANT TESTING	EACH	12		
511000	SUBSTRUCTURE CONCRETE CLASS A	CU. YD.	338		
511070	SUBSTRUCTURE CONCRETE CLASS HPD	CU. YD.	452		
514042	CONCRETE BARRIER RAILINGS 42"	LIN. FT.	490		
518045	PRESTRESSED CONCRETE BRIDGE MEMBER TYPE 45	LIN. FT.	356		
518072	PRESTRESSED CONCRETE BRIDGE MEMBER TYPE 72	LIN. FT.	847		
531001	PERMANENT ANTI-GRAFFITI PROTECTIVE COATING	SQ. YD.	1,011		
536001	EPOXY URETHANE POLYMER CONCRETE BRIDGE DECK OVERLAY	SQ. YD.	1,326		
540060	REINFORCING BARS GRADE 60	LBS.	12,362		
540160	EPOXY COATED REINFORCING BARS GRADE 60	LBS.	107,418		
541000	STRUCTURAL STEEL FOR CONCRETE BRIDGES	LBS.	12,775		
543100	METAL RAILING, PEDESTRIAN	LIN. FT.	485		
560000	ELASTOMERIC BEARING PAD	EACH	24		
562000	BRIDGE JOINT STRIP SEAL	LIN. FT.	106		
563099	POLYMER BRIDGE JOINT SEALS	LIN. FT.	196		
601000	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	L.S.	1		
601110	REMOVAL OF SURFACING	SQ. YD.	3,220		
602000	RIPRAP CLASS A	CU. YD.	120		
602020	RIPRAP CLASS C	CU. YD.	1,250		
603100	TEMPORARY SOIL STABILANT	ACRE	1		
604300	GEOGRID REINFORCEMENT	SQ. YD.	340		
606001	SINGLE FACED W-BEAM GUARDRAIL	LIN. FT.	1,190		
606052	END TREATMENT TL-2 END TREATMENT	EACH	5		
606053	END TREATMENT W-BEAM END ANCHOR	EACH	5		
606062	TRANSITION METAL BARRIER TO RIGID BARRIER	EACH	4		
606063	EXISTING BEAM GUARDRAIL TO 31" BEAM GUARDRAIL TRANSITION	EACH	2		

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
606401	REMOVE AND REINSTALL GUARDRAIL	LIN. FT.	140		
606599	RESETTING OF TCWB	LIN. FT.	720		
606710	TCWB RETAINED BY THE CONTRACTOR (20')	LIN. FT.	360		
607199	REMOVE AND REBUILD FENCE	LIN.FT.	790		
632000	CLASS A SEEDING	ACRE	1		
704700	HOT THERMOPLASTIC PAVEMENT MARKINGS 4"	LIN. FT.	4,800		
107000	ENVIRONMENTAL COMMITMENTS	L.S.	1		
201000	CLEARING AND GRUBBING	L.S.	1		
603281	SWPPP PLAN PREPARATION AND MAINTENANCE	L.S.	1		
618000	TRAFFIC CONTROL MANAGEMENT	L.S.	1		
621000	MOBILIZATOIN	L.S.	1		
702810	TRAFFIC CONTROL DEVICES FOR CONSTRUCTION	L.S.	1		
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					
NMGRT (6.6875%)					
Total Cost Including NMGRT, Base Bid and Allowances of all Unit Price Bid Items					\$

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) \$_____.
- D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

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 account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 28th 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. **100** percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. **100** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **100** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions.

6.03 *Final Payment*

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

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the maximum legal rate.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. 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 Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.

NOTE(S) TO USER:

If the Contract Documents do not identify any Site-related reports and drawings, modify this paragraph accordingly.

- E. 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.
- F. 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.
- G. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- I. 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.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement.
 - 2. Performance bond.
 - 3. Payment bond.
 - 4. General Conditions.
 - 5. Supplementary Conditions.
 - 6. Specifications as listed in the table of contents of the Project Manual.
 - 7. Drawings (not attached but incorporated by reference)
 - 8. Addenda
 - 9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid
 - 10. 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.
- B. The documents listed in Paragraph 9.01.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 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

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

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, 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 Documents.

10.03 *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.

10.04 *Severability*

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

10.05 *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 10.05:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing 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.

10.06 Other Provisions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, 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: San Juan County

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

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

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)

(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.)

PERFORMANCE BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

San Juan County
100 S. Oliver Drive
Aztec, NM 87410

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):* Bridge 8130 Replacement on San Juan County Road 5500 at the San Juan River crossing.

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: None See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

(seal)
Contractor's Name and Corporate Seal

(seal)
Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence,

to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. 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.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. 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 shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims

for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 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.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

**SECTION 6
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 Bonds and 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 Initial Acceptance of Schedules	7
2.06 Electronic Transmittals.....	7
Article 3 – Documents: Intent, Requirements, Reuse	8
3.01 Intent.....	8
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	10
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	11
Article 5 – Availability of Lands; 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	14
5.05 Underground Facilities	15
5.06 Hazardous Environmental Conditions at Site.....	17

Article 6 – Bonds and Insurance	19
6.01 Performance, Payment, and Other Bonds	19
6.02 Insurance—General Provisions	19
6.03 Contractor’s Insurance	20
6.04 Owner’s Liability Insurance	23
6.05 Property Insurance.....	23
6.06 Waiver of Rights	25
6.07 Receipt and Application of Property Insurance Proceeds	25
Article 7 – Contractor’s Responsibilities.....	26
7.01 Supervision and Superintendence	26
7.02 Labor; Working Hours	26
7.03 Services, Materials, and Equipment.....	26
7.04 “Or Equals”	27
7.05 Substitutes	28
7.06 Concerning Subcontractors, Suppliers, and Others	29
7.07 Patent Fees and Royalties	31
7.08 Permits	31
7.09 Taxes	32
7.10 Laws and Regulations.....	32
7.11 Record Documents.....	32
7.12 Safety and Protection.....	32
7.13 Safety Representative	33
7.14 Hazard Communication Programs	33
7.15 Emergencies	34
7.16 Shop Drawings, Samples, and Other Submittals.....	34
7.17 Contractor’s General Warranty and Guarantee.....	36
7.18 Indemnification	37
7.19 Delegation of Professional Design Services	37
Article 8 – Other Work at the Site	38
8.01 Other Work	38
8.02 Coordination	39
8.03 Legal Relationships.....	39
Article 9 – Owner’s Responsibilities	40
9.01 Communications to Contractor.....	40
9.02 Replacement of Engineer	40

9.03	Furnish Data	40
9.04	Pay When Due	40
9.05	Lands and Easements; Reports, Tests, and Drawings	40
9.06	Insurance	40
9.07	Change Orders.....	40
9.08	Inspections, Tests, and Approvals.....	41
9.09	Limitations on Owner’s Responsibilities	41
9.10	Undisclosed Hazardous Environmental Condition.....	41
9.11	Evidence of Financial Arrangements.....	41
9.12	Safety Programs	41
Article 10 – Engineer’s Status During Construction.....		41
10.01	Owner’s Representative.....	41
10.02	Visits to Site.....	41
10.03	Project Representative.....	42
10.04	Rejecting Defective Work.....	42
10.05	Shop Drawings, Change Orders and Payments.....	42
10.06	Determinations for Unit Price Work	42
10.07	Decisions on Requirements of Contract Documents and Acceptability of Work	42
10.08	Limitations on Engineer’s Authority and Responsibilities.....	42
10.09	Compliance with Safety Program.....	43
Article 11 – Amending the Contract Documents; Changes in the Work.....		43
11.01	Amending and Supplementing Contract Documents	43
11.02	Owner-Authorized Changes in the Work	44
11.03	Unauthorized Changes in the Work.....	44
11.04	Change of Contract Price	44
11.05	Change of Contract Times	45
11.06	Change Proposals.....	45
11.07	Execution of Change Orders.....	46
11.08	Notification to Surety.....	47
Article 12 – Claims.....		47
12.01	Claims	47
Article 13 – Cost of the Work; Allowances; Unit Price Work		48
13.01	Cost of the Work	48
13.02	Allowances	50
13.03	Unit Price Work	51

Article 14 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work	52
14.01 Access to Work.....	52
14.02 Tests, Inspections, and Approvals.....	52
14.03 Defective Work.....	53
14.04 Acceptance of Defective Work.....	53
14.05 Uncovering Work	53
14.06 Owner May Stop the Work	54
14.07 Owner May Correct Defective Work.....	54
Article 15 – Payments to Contractor; Set-Offs; Completion; Correction Period.....	55
15.01 Progress Payments.....	55
15.02 Contractor’s Warranty of Title	58
15.03 Substantial Completion.....	58
15.04 Partial Use or Occupancy	59
15.05 Final Inspection	59
15.06 Final Payment.....	59
15.07 Waiver of Claims	61
15.08 Correction Period	61
Article 16 – Suspension of Work and Termination	62
16.01 Owner May Suspend Work	62
16.02 Owner May Terminate for Cause.....	62
16.03 Owner May Terminate For Convenience	63
16.04 Contractor May Stop Work or Terminate	63
Article 17 – Final Resolution of Disputes.....	64
17.01 Methods and Procedures.....	64
Article 18 – Miscellaneous	64
18.01 Giving Notice.....	64
18.02 Computation of Times.....	64
18.03 Cumulative Remedies	64
18.04 Limitation of Damages	65
18.05 No Waiver	65
18.06 Survival of Obligations	65
18.07 Controlling Law	65
18.08 Headings.....	65

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 form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *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, or both; 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, or both; 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; or (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. 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), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree 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 the 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. *Engineer*—The individual or entity named as such in the Agreement.
21. *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.
22. *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. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *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.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *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.
28. *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.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
30. *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.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *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.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *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.
36. *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.

37. *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 furnished by Owner which are designated for the use of Contractor.
38. *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.
39. *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.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) 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 the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *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.

48. *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 the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

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

C. *Day:*

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

D. *Defective:*

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

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

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

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. 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. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor's Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner's Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), 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 executed 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 specifically 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 *Initial Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items 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 items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

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

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, shall mean 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, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the 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 Documents 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 Documents 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 shall 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 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 thereunder.
- 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 give written notice to Owner and Contractor 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 editions, 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 shall preclude 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 thirtieth 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 sixtieth day after the day of Bid opening or the thirtieth 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 shall 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 shall 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 shall 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 the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- 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. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall 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 utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. 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.
- E. Paragraph 8.03 governs 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.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times 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.

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- 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; 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 7.12, 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 at law; 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 shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site 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 known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); 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 upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. 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; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

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

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 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 the necessity of Owner's obtaining 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 above; 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. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, 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 conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
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; or
 - 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 as 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, or both, then any such adjustment shall 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, or both, 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.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. 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 in the Contract Documents, or was not shown or indicated 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), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; 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 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. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, 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. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - 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;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. 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, or both, then any such adjustment shall 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, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 2. 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 Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. 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; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for 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.

EJCDC® C-700, Standard General Conditions of the Construction Contract.

Copyright © 2013 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers. All rights reserved. Page 17 of 65

- 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, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, 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.
- 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 or 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.H shall obligate 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 shall obligate 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 all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, 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 shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. 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.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

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. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements 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 and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements 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 and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. 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, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of 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.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect 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 shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *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:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 2. claims for damages insured by reasonably available personal injury liability coverage.
 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. 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.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. 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); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. 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.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *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. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *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 shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
1. include at least the specific coverages provided in this Article.
 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 4. remain in effect at least until final payment (and longer if expressly required in this Article) 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 Documents.
 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. 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.

6.05 *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 full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. 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 may be provided through other insurance policies acceptable to Owner and Contractor.
 - 3. 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.
 - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. 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).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed 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.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- 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 notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* 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 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. 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 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 Subcontractors, all individuals or entities identified in the Supplementary Conditions as 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. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial 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.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work 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 any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 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 6.05 shall 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, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

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

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, 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.

7.03 *Services, Materials, and Equipment*

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

guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the 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 material or equipment, or items from other proposed suppliers under the circumstances described below.

- 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:

- 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
- 3) it has a proven record of performance and availability of responsive service; and
- 4) it is not objectionable to Owner.

- b. Contractor certifies that, if approved and incorporated into the Work:

- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
- 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

- 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 shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 *Substitutes*

- A. 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 no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall 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 material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.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 material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall 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 that specified, and
 - 3) be suited to the same use as that 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 that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall 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 shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities 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, Supplier, or other individual or entity 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 five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. 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, Suppliers, or other individuals or entities 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, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- 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 be entitled to an adjustment in Contract Price or Contract Times, or both, 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, Supplier, or other individual or entity, whether initially or as a replacement, shall 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 fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

O. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, 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.

7.08 *Permits*

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

7.09 *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.

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work 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 shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give 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 notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *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.

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent 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.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when 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.
 - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
 - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
 - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor 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).
 - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
 - G. Contractor's duties and responsibilities for safety and protection shall 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.

7.13 *Safety Representative*

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

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

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 threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

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

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

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

provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

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.D.

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. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction 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 shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 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.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 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, shall 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, Sample, or other submittal shall 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.D.4.

E. *Resubmittal Procedures:*

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

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 and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

- D. 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 shall 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 and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their 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 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

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 utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. 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.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, 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.

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 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 shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. 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 shall 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. When applicable, any such equitable adjustment in Contract Price shall 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 is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- 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. 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 to 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.
- C. 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 to Contractor.

- D. 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 shall 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 Documents (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 10.08. 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 *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 Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *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.

10.07 *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.

10.08 *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, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 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 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *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 (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not 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, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* 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 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders:* 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. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *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. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes 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 shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate 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.

11.03 *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.

11.04 *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 shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall 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); or
 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 11.04.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 11.04.C).

- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.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 five 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 shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall 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 will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *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 shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. 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. The supporting data shall 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. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall 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.
 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *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 that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 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 11.02, (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 in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *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 shall be submitted 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; and
 - 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.
- 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 shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall be incorporated in a Change Order 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. 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 shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall 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. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

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

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, 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 property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes

EJCDC® C-700, Standard General Conditions of the Construction Contract.

Copyright © 2013 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved. Page 49 of 65

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

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as 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 shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 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. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

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 on account of any of the foregoing will be valid.
- C. *Contingency Allowance:* Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

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, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 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 will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

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 shall 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 shall 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 shall 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 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 shall 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 special 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, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, 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 shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

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 rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 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 on account of 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. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- 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, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 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 on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of 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 that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated 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;
 - l. there are other items entitling 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 shall 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 shall be treated as an amount due as determined by Paragraph 15.01.C.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 seven 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 shall 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 seven 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 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 6.05 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 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall 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 disputes that Contractor believes are unsettled; 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 Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall 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. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. 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. *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.

D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- 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 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 terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then 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 other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not 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, 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*

- 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) ten 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) 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 seven 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 shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; 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 on account of loss of anticipated overhead, profits, or revenue, 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 seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 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, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph 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; and
 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising 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; or
 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 Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

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 shall not constitute a waiver of that provision, nor shall 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 or completion of the Contract or termination 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 *Headings*

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

**SECTION 7
SUPPLEMENTARY CONDITIONS**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract EJCDC- C0700, 2013 Edition and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

**ARTICLE 5
AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS
ENVIRONMENTAL CONDITIONS
SECTION 5.07
HAZARDOUS ENVIRONMENTAL CONDITIONS AT SITE**

Paragraph 5.07(I) is deleted to the extent that it is prohibited by New Mexico law.

**ARTICLE 6
BONDS AND INSURANCE
SECTION 6.01
PERFORMANCE, PAYMENT, AND OTHER BONDS**

Paragraphs G, H, I, and J shall be inserted in Section 6.01:

- G. The cost of bonds shall be included in the Contract Sum. The Contractor shall deliver the performance and payment bonds to the Owner not later than ten (10) days after the bid is awarded to the Contractor, or, if the Work is to be commenced prior thereto, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bond will be furnished. In addition to being U.S. Treasury listed, each surety shall be licensed in New Mexico and have an A.M. Best rating of A minus VII or better.
- H. **Subcontractor shall provide to the General Contractor a Performance and Payment Bond on a New Mexico public works project if the Subcontractor's Contract for work to be performed on the project is one hundred twenty-five thousand dollars (\$125,000) or more pursuant to NMSA 1978, § 13-1-148.1 (2007).** 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 shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. Each Surety must be U.S. Treasury listed, licensed in New Mexico and have an A.M. Best rating of A minus VII or better.
- I. In the event that a change order is executed that increases the Contract Sum by 25% or more, the performance and payment bonds shall be revised to an amount to equal one hundred percent (100%) of the revised Contract Sum. The revised bonds shall meet the same requirements as Paragraphs A and B above.
- J. The Contractor shall use the 2010 AIA A312 form or the 2013 EJCDC C-610 form for execution of Performance Bonds, or the 2010 AIA A312 or 2013 EJCDC C-615 2013 for execution of Payment Bonds.

**ARTICLE 6
BONDS AND INSURANCE
SECTION 6.03
CONTRACTOR'S INSURANCE**

Section 6.03 is hereby amended by inserting the following insurance requirements:

- C. Liability insurance shall include all major divisions of coverage and be on a comprehensive through completed operations basis including:

- .1 Premises and Operation (including X, C, and U coverages as applicable).
 - .2 Independent Contractors' Protective.
 - .3 Products and Completed Operations.
 - .4 Personal Injury Liability with Employment Exclusions deleted.
 - .5 Broad Form Property Damage including Completed Operations.
 - .6 Owned, non-owned, and hired motor vehicles, liability symbol 1.
- D. The insurance shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment. The Owner shall be named as an additional insured by endorsement to the Contractor's General Liability and Automobile Liability policies.
- E. If any of the foregoing insurance coverage is required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief. If the insurance is written on the Comprehensive General Liability policy form, the form ("Certificate of Insurance") shall be ACORD Form 25. **The certificate shall show the Owner as an additional insured.**
- F. Consistent with the New Mexico Tort Claims Act, the insurance shall be written for not less than the limits of liability specified in the following Clauses, or required by law, whichever coverage is greater:
- .1 Worker's Compensation:
 - a) State: Statutory
 - b) Employees Liability:
 - \$1,000,000 per accident
 - \$1,000,000 Disease, Policy Limit
 - \$1,000,000 Disease, Each Employee
 - .2 Comprehensive or Commercial General Liability (including Premise-Operations; Independent Contractor's Protective; Products and Completed Operations; Broad Form Property Damage):
 - a) Bodily Injury and Property Damage:
 - \$1,000,000, combined single limit each Occurrence
 - \$2,000,000, general aggregate (if applicable)
 - b) Products and Completed Operation to be maintained for two years after final payment.
 - .3 Contractual Liability: Bodily Injury and Property Damage: \$1,000,000, combined single limit each occurrence.
 - .4 Personal Injury, with Employment Exclusion deleted: \$1,000,000, aggregate.
 - .5 Business Auto Liability (including owned, non-owned, and hired vehicles): Bodily Injury and Property Damage: \$1,000,000, each occurrence.

.6 If the General Liability coverage is provided by a Commercial Liability policy, the:

- a) General Aggregate shall be not less than \$2,000,000 and it shall pertain to this project only.
- b) The Fire Damage Limit shall be not less than \$50,000 on any one fire.
- c) The Medical Expense Limit shall be not less than \$5,000 on any one person.

**ARTICLE 6
BONDS AND INSURANCE
SECTION 6.05
PROPERTY INSURANCE**

Subparagraph A(14) is inserted into Section 6.05 after Subparagraph A(13):

14. Property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are the beneficiaries of such insurance, during the CONTRACT TIME until work is accepted by Owner. The policy shall also contain Completed Operations coverage, which coverage shall survive the acceptance of the work for a period of not less than two (2) years. In addition to the requirements described in Subparagraph 2, the property insurance shall provide extended coverage against the perils of fire, and shall cover reasonable compensation for Engineer's and Contractor's services and expenses required as a result of such insured loss. If the property insurance requires deductibles, the CONTRACTOR shall pay costs not covered because of such deductibles.

**ARTICLE 7
CONTRACTOR'S RESPONSIBILITIES
SECTION 7.01
PROGRESS SCHEDULE**

Add the following Paragraphs C, D and E to Section 7.01:

- C. The Owner may require the Contractor to take such measures or adopt such methods as may be necessary in the Owner's opinion to obtain and maintain satisfactory progress when, in the Owner's judgment, the Work is not proceeding in accordance with the approved progress schedule or otherwise at a reasonable rate to achieve Substantial Completion within the time frame set by the Contract Documents. The Contractor shall not receive any additional compensation if the Owner imposes such a requirement. The failure of the Owner to require such measures pursuant to this Paragraph shall not relieve the Contractor of his obligation to secure the rate of progress necessary to complete the Work within the time required of the Contract Documents.
- D. In the event that the Contractor fails or, in the judgment of the Owner or Engineer fails to complete a critical portion of Work on time or to complete a contractual milestone or completion date as evidenced by the latest update of the Project Construction Schedule Report, the Owner shall have the right to impose any or all of the following options:
 - .1 Require the Contractor to substantiate his capability to "get back on schedule within ten (10) working days".
 - .2 Require the Contractor to increase his work force, work overtime, and/or extra shifts, and do whatever else is required by the Owner until Contractor gets back on schedule as established by the Project Construction Schedule Report (including any updates thereto), such measures being at no extra cost to Owner.

- .3 Withhold progress payment, or portions thereof, until such time as the Contractor returns to the approved schedule.
 - .4 Require the Contractor, Owner, or Engineer to contact the factory, plant or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work, and expedite same, at no expense to the Owner. If costs are incurred in executing the requirements of this Subparagraph, whether by the Owner, or Engineer, the Contract Sum shall be decreased by the cost occasioned by such action and an appropriate Change Order shall be issued.
- E. The Contractor shall furnish such manpower, materials, facilities, and equipment and shall work such hours, including night shifts, overtime operations, and Sundays and/or Holidays, as may be necessary to ensure the progress and completion of both the Work and the Project as reflected by the currently updated Project Construction Schedule (as may be modified and approved from time to time). If either the Work or the Project actually in place falls behind, impacting the Substantial or Final Completion date of the project, as reflected by the currently updated Project Construction Schedule, the Contractor agrees that s/he will, as necessary, take some or all of the following actions at no additional cost to the Owner or Engineer, as required to substantially remedy, in the judgment of the Owner, the timely execution of Work on the Project:
- .1 Increase manpower in quantities and crafts as necessary;
 - .2 Increase the number of working hours per shift, shifts per working day, working days per week, the amount of equipment, or any combination of the foregoing; and/or
 - .3 Reschedule activities to achieve maximum practical concurrence of accomplishment; and
 - .4 The Owner may require the Contractor to submit a new schedule. If the revised schedule proposed is not satisfactory, the Owner may require revisions until it is determined to be satisfactory, in order to make up the difference in actual versus scheduled progress.
 - .5 Do whatever else is reasonably required by the Owner.
 - .6 Failure of the Contractor to substantially comply with the requirements of Article 7 shall be considered grounds for a determination by the Owner that the Contractor is in breach of this Contract by failing to prosecute the Work so as to ensure its completion and that of the Project within both the Contract Time and the updated Project Construction Schedule.

**ARTICLE 7
CONTRACTOR'S RESPONSIBILITIES
SECTION 7.02
LABOR, WORKING HOURS**

Add the following paragraph to Section 7.02:

C. Wage rates are required on this Project if the bid amount exceeds \$60,000. Employees of any Contractor or Subcontractor participating in the work shall be paid not less than the minimum wage rates of the State of New Mexico as published by the State Labor and Industrial Commission.

- .1 Pursuant to Section 13-4-11(A) NMSA 1978, the Contractor and subcontractors shall pay all mechanics and laborers employed on the site of the project unconditionally and not less often than once a week and without subsequent unlawful deduction or

rebate on any account, the full amounts accrued at time of payment computed at wage rates not less than those stated in the minimum wage rates issued for the project.

.2 Contractor shall comply fully with the requirements set forth in the Public Works Minimum Wage Act Policy Manual, 11 NMAC 1.1 et seq., and the Wage Decision Packet issued by the State of New Mexico Department of Workforce Solutions.

3 The General Contractor, Subcontractors and all tier Subcontractors must be registered with the Labor and Industrial Division in accordance with Public Works Minimum Wage Act, Section 13-4-13.1 NMSA 1978.

.4 Contractor and all Subcontractors shall comply with the requirements listed in the Project Manual.

**ARTICLE 7
CONTRACTOR'S RESPONSIBILITIES
SECTION 7.06
CONCERNING SUBCONTRACTORS, SUPPLIERS, AND OTHERS**

Paragraph M of Section 7.06 is amended by adding the following sentence: The Contractor shall, on a daily basis, coordinate and review each Subcontractor's work for compliance with Contract Documents.

**ARTICLE 7
CONTRACTOR'S RESPONSIBILITIES
SECTION 7.07
PATENT FEES AND ROYALTIES**

Paragraph B of Section 7.07 is deleted in its entirety pursuant to New Mexico law.

**ARTICLE 7
CONTRACTOR'S RESPONSIBILITIES
SECTION 7.10
LAWS & REGULATIONS**

Add the following Paragraphs D, E, and F to Section 7.10 to read as follows:

- D. The Contractor shall be licensed to execute the Work of this Contract in accordance with applicable licensing statutes of the State of New Mexico and other applicable regulatory agencies. The Contractor and his/her Subcontractors shall also comply with Federal, State, tribal and local regulations, as applicable. The Contractor shall comply with the Owner's policies and procedures regarding secure areas. The Contractor and his/her Subcontractors and their respective employees may be subject to search-and-security clearance.
- E. Notice is given that the Procurement Code, Sections 13-1-21 through 13-1-1997 NMSA, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**ARTICLE 7
CONTRACTOR'S RESPONSIBILITIES
SECTION 7.12
RECORD DOCUMENTS**

Add the following Paragraph B to Section 7.11:

- B. The Contractor shall, at the end of every week, or at other mutually agreed intervals submit Daily Reports to the Owner (by facsimile or original), a report stating: labor forces on-site, areas worked, any potential schedule or coordination problems, material deliveries received, site visitors, and other relevant information required by the Owner.

**ARTICLE 7
CONTRACTOR'S RESPONSIBILITIES
SECTION 7.12
SAFETY AND PROTECTION**

The Owner's safety program referenced in Paragraph 7.12(C) is as follows:

All Contractors and subcontractors shall comply with the San Juan County Safety and Compliance Contractor Safety Verification Program, a copy of which is available from the San Juan County Safety and Compliance Manager. Specific safety precautions and programs also include, but are not limited to, the following:

- .1 Contractor shall provide a Project-specific Safety Plan
- .2 Hard hats shall be worn at all times.
- .3 Safety glasses with side shields shall be worn at all times.
- .4 100 percent fall protection shall be employed when construction personnel are exposed to falls of 6-feet and greater.
- .5 Contractor shall be responsible for developing a Fire Protection Program (i.e., Hot Work Permit Program).
- .6 Contractor shall provide third-party inspections of cranes brought onto the Project site, prior to use.

Paragraph H is also added to Section 7.12:

- H. Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not to exceed 21 days after discovery. The notice shall provide sufficient details to enable the other party to investigate the matter. However, nothing in this Paragraph or in the Contract Documents shall be construed as waiving defenses available to the Owner under the common law or statutory doctrines of sovereign immunity. The Owner shall be responsible for Claims arising from personal injury or property damage only to the extent specifically required by the New Mexico Tort Claims Act N.M.S.A. 1978, Section 41-4-1 et seq. (as amended).

**ARTICLE 11
AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK
SECTION 11.04
CHANGE IN CONTRACT PRICE**

Subparagraph 11.04(C)(2) is deleted in its entirety since cost plus percentage contracts are prohibited by New Mexico law.

**ARTICLE 15
PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD
SECTION 15.08
CORRECTION PERIOD**

Add the following sentence at the beginning of Subparagraph 15.08(A):

Eleven (11) months after substantial completion, the Owner, Engineer and Contractor shall attend a walkthrough to inspect the Work. Any concerns will be addressed in writing to the Contractor. The Contractor shall correct the deficiencies as provided in § 15.08.

**ARTICLE 16
SUSPENSION OF WORK AND TERMINATION
SECTION 16.02
OWNER MAY TERMINATE FOR CAUSE**

Add the following Subparagraphs 5 and 6 to Paragraph 16.02(A):

5. In addition to the grounds for termination set forth elsewhere in the Bid Documents or in the Contract Documents, any Contract awarded may be terminated if sufficient appropriations or authorizations exist. San Juan County's decision concerning whether sufficient appropriations or authorizations exist will be final.
6. This contract may also be terminated pursuant to Section 13-4-13 NMSA 1978 in the event that the Director of the Labor and Industrial Division of the New Mexico Department of Labor finds that any laborer or mechanic employed on the site of the project has been, or is being paid as a result of a willful violation a rate of wages less than the rate of wages required by Section 13-4-11 NMSA 1978, provided written notice is given by Owner to the Contractor or subcontractor. A party receiving such notice shall have the right to appeal afforded by Section 13-4-13 NMSA 1978.

**ARTICLE 17
FINAL RESOLUTION OF DISPUTES
SECTION 17.01
METHODS AND PROCEDURES**

Claims Subject to Arbitration. If the parties agree, they may elect in writing to arbitrate a claim pursuant to Subparagraph 17.01(B)(1). Any Claim which the parties agree to arbitrate shall be arbitrated in accordance with the New Mexico Uniform Arbitration Act, N.M.S.A. 1978, Section 44-7A-1 *et seq.* (2001). A single arbitrator shall be appointed to hear the arbitration, and shall be selected by agreement of the parties. The arbitrator's decision shall be binding upon the parties. If the parties cannot agree on an arbitrator, then the arbitrator shall be selected by the Chief Judge of the Eleventh Judicial District Court, State of New Mexico. Notice of a request for arbitration shall be filed in writing with the other party of this agreement, and a copy shall be filed with the Engineer. The request shall be made within a reasonable time, but in no event shall the request for arbitration be made after the date when institution of legal or equitable proceedings based on such claims or controversies would be barred by the applicable statute of limitations.

**ARTICLE 18
MISCELLANEOUS
SECTION 18.07
CONTROLLING LAW**

The following Paragraph B is inserted into Section 18.07: B. Any action to enforce terms and conditions herein shall be brought only in the courts having jurisdiction in San Juan County, New Mexico.

**ARTICLE 18
MISCELLANEOUS
SECTION 18.09
SOVEREIGN IMMUNITY FOR CERTAIN CLAIMS**

The following Section 18.09 is inserted in Article 18:

Notwithstanding any contrary provision, no provision contained in the Contract Documents shall be construed as waiving defenses available to the Owner under the common law or statutory doctrines of sovereign immunity. The Owner shall be responsible for Claims arising from personal injury or property damage only to the extent specifically required by the New Mexico Tort Claims Act N.M.S.A. 1978, Section 41-4-1 et seq. (as amended).

END OF SUPPLEMENTARY CONDITIONS

PAYMENT BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

San Juan County
 100. S. Oliver Drive
 Aztec, NM 87410

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: None See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

(seal)
 Contractor's Name and Corporate Seal

(seal)
 Surety's Name and Corporate Seal

By: _____
 Signature

By: _____
 Signature *(attach power of attorney)*

 Print Name

 Print Name

 Title

 Title

Attest: _____
 Signature

Attest: _____
 Signature

 Title

 Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 satisfy 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 shall 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 shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall 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 shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall 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:
 1. The name of the Claimant;
 2. The name of the person for whom the labor was done, or materials or equipment furnished;
 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;
 4. A brief description of the labor, materials, or equipment furnished;
 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;
 6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 7. The total amount of previous payments received by the Claimant; and
 - 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 shall be 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.
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
18. Modifications to this Bond are as follows:

Work Change Directive No.

Date of Issuance: _____ Effective Date: _____
 Owner: _____ Owner's Contract No.: _____
 Contractor: _____ Contractor's Project No.: _____
 Engineer: _____ Engineer's Project No.: _____
 Project: _____ Contract Name: _____

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

Description:

Attachments: *[List documents supporting change]*

Purpose for Work Change Directive:

Directive to proceed promptly with the Work described herein, prior to agreeing to changes on Contract Price and Contract Time, is issued due to: *[check one or both of the following]*

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

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

Contract Price \$ _____ [increase] [decrease].
 Contract Time _____ days [increase] [decrease].

Basis of estimated change in Contract Price:

- Lump Sum Unit Price
- Cost of the Work Other

RECOMMENDED:	AUTHORIZED BY:	RECEIVED:
By: _____ Engineer (Authorized Signature)	By: _____ Owner (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____

Approved by Funding Agency (if applicable)

By: _____ Date: _____
 Title: _____

Date of Issuance:	Effective Date:
Owner:	Owner's Contract No.:
Contractor:	Contractor's Project No.:
Engineer:	Engineer's Project No.:
Project:	Contract Name:

Contractor is hereby directed to promptly execute this Field Order, issued in accordance with General Conditions Paragraph 11.01, for minor changes in the Work without changes in Contract Price or Contract Times. If Contractor considers that a change in Contract Price or Contract Times is required, submit a Change Proposal before proceeding with this Work.

Reference: _____
Specification(s) _____ Drawing(s) / Detail(s)

Description:

Attachments:

ISSUED:	RECEIVED:
By: _____ Engineer (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Title: _____	Title: _____
Date: _____	Date: _____

Copy to: Owner

CHANGE ORDER PROCEDURES

PART 1 GENERAL

1.1 REQUIREMENTS INCLUDED

A. Promptly implement Change Order procedures.

1. Provide full written data required to evaluate changes.
2. Maintain detailed records of work done on a time-and-material/force account basis.
3. Provide full documentation to the designated San Juan County Representative upon request.

B. Designate in writing the member of Contractor's organization:

1. Who is authorized to accept changes in the work.
2. Who is responsible for informing others in the Contractor's employ of the authorization of changes in the Work.

C. Owner will designate in writing the person who is authorized to execute Change Orders on behalf of San Juan County.

1.2 RELATED REQUIREMENTS

A. Agreement: The amounts of established unit prices.

B. Conditions of the Contract:

1. Methods of determining cost or credit to Owner resulting from changes in Work made on a time and material basis.
2. Contractor's claims for additional costs.

1.3 DEFINITIONS

A. Modification Change Request: See General Conditions

B. Change Order: A written order to the Contractor, signed by Owner's designated representative, which amends the Contract Documents as described, and authorizes Contractor to proceed with a change which affects the Contract Sum or the Contract Time, for inclusion in a subsequent Change Order.

C. A written order, instructions, or interpretations, signed by the San Juan County Representative making minor changes in the Work not involving a change in Contract Sum or Contract Time.

1.4 PRELIMINARY PROCEDURES

A. Owner or San Juan County Representative may initiate changes by submitting a Proposal Request to Contractor. Request will include:

1. Detailed description of the Change, Products, and location of the change in the Project.
2. Supplementary or revised Drawings and Specifications.

3. The projected time span for making the change, and a specific statement if overtime work is authorized.
4. A specific period of time during which the requested price will be considered valid.
5. Such request is for information only, and is not an instruction to execute the changes, nor to stop Work in progress.

B. Contractor may initiate changes by submitting a written notice to San Juan County Representative, containing:

1. Description of the proposed changes.
2. Statement of the reason for making the changes.
3. Statement of the effect on the Contract Sum and the Contract Time.
4. Statement of the effect on the work of separate contractors.
5. Documentation supporting any change in Contract Sum or Contract Time, as appropriate.

1.5 CONSTRUCTION CHANGE AUTHORIZATION

- A. In lieu of Proposal Request, San Juan County Representative may issue a construction change authorization for Contractor to proceed with a change for subsequent inclusion in Change Order.
- B. Authorization will describe changes in the Work, both additions and deletions, with attachments of revised Contract Documents to define details of the change, and will designate the method of determining any change in the Contract Sum and any change in Contract Time.
- C. Owner or San Juan County Representative will sign and date the Construction Change Authorization as authorization for the Contractor to proceed with the changes.

Contractor may sign and date the Construction Change Authorization to indicate agreement with the terms therein.

1.6 DOCUMENTATION OF PROPOSALS AND CLAIMS

- A. Support each quotation for a lump-sum proposal, and for each unit price which has not previously been established, with sufficient substantiating data to allow San Juan County Representative to evaluate the quotation.
 1. CONTRACTOR SHALL PROVIDE WRITTEN DOCUMENTATION AND COST PROPOSALS WITHIN 10 DAYS OF RECEIPT OF ANY PROPOSAL REQUEST, CONSTRUCTION CHANGE AUTHORIZATION. IF WRITTEN DOCUMENTATION IS NOT RECEIVED BY SAN JUAN COUNTY REPRESENTATIVE WITHIN 10 DAYS, NO EXTRA CHARGES OR INCREASES IN CONTRACT TIME WILL BE ALLOWED.
 2. Contractor shall submit breakdown of costs on enclosed form.
- B. Unless specified otherwise, provide data to support time and cost computations:
 1. Labor required.
 2. Equipment required.
 3. Products required.
 - a. Recommended source of purchase and unit cost.
 - b. Quantities required.

4. Taxes, insurance and bonds.
5. Credit for work deleted from Contract, similarly documented.
6. Overhead and profit.
7. Justification for any change in Contract Time.
8. Use copies of form at end of this section.
9. Each Sub-Contractor and the General Contractor shall submit breakdown on form provided.

C. Support each claim for additional costs, and for work done on a time-and-material/force account basis, with documentation as required for a lump-sum proposal, plus additional information:

10. Name of the Owner's designated representative who ordered the work, and date of the order.
11. Dates and times work was performed, and by whom.
12. Time record, summary of hours worked, and hourly rates paid.
13. Receipts and invoices for:
 - a. Equipment used, listing dates and times of use.
 - b. Products used, listing of quantities.
 - c. Subcontracts.

1.7 PREPARATION OF CHANGE ORDERS

- A. San Juan County Representative will prepare each Change Order.
- B. Form: Change Order: EJCDC C-941 Change Order
- C. Change Order will describe changes in the Work, both additions and deletions, with attachments of revised Contract Documents to define details of the change.
- D. Change Order will provide an accounting of the adjustment in the Contract Sum and in the Contract Time.

1.8 LUMP SUM/FIXED PRICE CHANGE ORDER

- A. Content of Change Orders will be based on, either:
 1. San Juan County Representative's Proposal Request and Contractor's responsive Proposal as mutually agreed between Owner and Contractor.
 2. Contractor's Proposal for a change, as recommended by San Juan County Representative.
- B. Owner or San Juan County Representative will sign and date the Change Order as authorized for the Contractor to proceed with the changes.
- C. Contractor may sign and date the Change Order to indicate agreement with the terms therein.

1.9 UNIT PRICE CHANGE ORDER

- A. Content of Change Orders will be based on, either:

1. San Juan County Representative's definition of the scope of the required changes.
2. Contractor's Proposal for a change, as recommended by San Juan County Representative.
3. Survey of completed work.

B. The amounts of the unit prices to be:

1. Those stated in the Agreement.
2. Those mutually agreed upon between Owner and contractor.

C. When quantities of each of the items affected by the Change Order can be determined prior to start of the work:

1. Owner or San Juan County Representative will sign and date the Change Order as authorization for Contractor to proceed with the changes.
2. Contractor may sign and date the Change Order to indicate agreement with the terms therein.

D. When quantities of the items cannot be determined prior to start of the work:

1. San Juan County Representative or Owner will issue a construction change authorization directing Contractor to proceed with the change on the basis of unit prices, and will cite the applicable unit prices.
2. At completion of the change, San Juan County Representative will determine the cost of such work based on the unit prices and quantities used.
3. San Juan County Representative will sign and date the Change Order to establish the change in Contract Sum and in Contract Time.
4. Owner or San Juan County Representative and Contractor will sign and date the Change Order to indicate their agreement with the terms therein.

1.10 TIME AND MATERIAL/FORCE ACCOUNT CHANGE ORDER/CONSTRUCTION CHANGE AUTHORIZATION

- A. San Juan County Representative and Owner will issue a Construction Change Authorization directing Contractor to proceed with the changes.
- B. At completion of the change, Contractor shall submit itemized accounting and supporting data as provided in the Article "Documentation of Proposals and Claims" of this section.

1.11 ALLOWABLE MARKUPS

- A. With each proposal for a change in the amount of the Contract, the Contractor shall submit separately a breakdown itemized to include material quantities and unit prices, labor and fringe benefit costs, equipment costs, Workmen's Compensation and Public Liability, overhead, profit, Social Security taxes, and other taxes.

The percentage for overhead and profit shall not exceed the following:

Subtotal Before Applying the Percentage shown

Contractor for work performed by his own forces	15%
Subcontractor for work performed by his own forces	10%

Contractor for work performed by subcontractor

5%

- B. Overhead: Individual Change Order proposals that include a time extension of five calendar days or less shall include the following: Bond premiums, insurance, small tools, incidentals and general office expense.
- C. Overhead for those including a time extension more than five calendar days shall include the above with supervision and superintendent wages negotiated on an individual basis.
- D. On proposals covering both increases and decreases in the amount of the contract, the COMBINED overhead and profit shall be allowed on the net increase only.
- E. No overhead or profit will be allowed on Social Security Taxes.

Change Order No. _____

Date of Issuance:	Effective Date:
Owner:	Owner's Contract No.:
Contractor:	Contractor's Project No.:
Engineer:	Engineer's Project No.:
Project:	Contract Name:

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

Description: _____

Attachments: *[List documents supporting change]*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: \$ _____	[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: Substantial Completion: _____ Ready for Final Payment: _____ days
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ _____	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ days or dates

RECOMMENDED:		ACCEPTED:		ACCEPTED:	
By: _____	By: _____	By: _____	By: _____	By: _____	By: _____
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)			
Title: _____	Title: _____	Title: _____	Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____	Date: _____	Date: _____	Date: _____

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____



ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

Contractor's Application for Payment No.

To (Owner) Project: Owner's Contract No.:	Application Date: Via (Engineer): Engineer's Project No.:
--------------------------------------------------------	-------------------------------------------------------------------------

Application For Payment Change Order Summary

Approved Change Orders	Additions	Deductions
TOTALS		
NET CHANGE BY		
CHANGE ORDERS		

1. ORIGINAL CONTRACT PRICE..... \$ _____
2. Net change by Change Orders..... \$ _____
3. Current Contract Price (Line 1 ± 2)..... \$ _____
4. TOTAL COMPLETED AND STORED TO DATE
(Column F total on Progress Estimates)..... \$ _____
5. RETAINAGE:

a. X	Work Completed.....	\$ _____
b. X	Stored Material.....	\$ _____
c.	Total Retainage (Line 5.a + Line 5.b).....	\$ _____
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)..... \$ _____
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... \$ _____
8. AMOUNT DUE THIS APPLICATION..... \$ _____
9. BALANCE TO FINISH, PLUS RETAINAGE
(Column G total on Progress Estimates + Line 5.c above)..... \$ _____

The undersigned Contractor certifies, to the best of its knowledge, the following: (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment. (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances), and (3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.	Contractor Signature _____ By: _____ Date: _____
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------

Payment of:	\$ _____	(Line 8 or other - attach explanation of the other amount)
is recommended by:	_____	(Date)
Payment of:	\$ _____	(Line 8 or other - attach explanation of the other amount)
is approved by:	_____	(Date)
Approved by:	_____	Funding or Financing Entity (if applicable) (Date)

CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner:	Owner's Contract No.:
Contractor:	Contractor's Project No.:
Engineer:	Engineer's Project No.:
Project:	Contract Name:

This [preliminary] [final] Certificate of Substantial Completion applies to:

- All Work The following specified portions of the Work:

Date of Substantial Completion

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.

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 shall be as provided in the Contract, except as amended as follows: *[Note: 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.]*

Amendments to Owner's responsibilities: None
 As follows

Amendments to Contractor's responsibilities: None
 As follows:

The following documents are attached to and made a part of this Certificate: *[punch list; others]*

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.

EXECUTED BY ENGINEER:	RECEIVED:	RECEIVED:
By: _____ (Authorized signature)	By: _____ Owner (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____

**SECTION 8
SAN JUAN COUNTY**

NMDOT SPECIAL PROVISIONS

The New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction, Edition 2019 or as periodically revised, are incorporated here by reference and shall govern the construction of roadway items for this project except where revised, amended or supplemented by the NMDOT Special Provisions, NMDOT Supplemental Specifications, or the San Juan County Special Provisions and Technical Provisions contained in this book. Where a conflict occurs between NMDOT and San Juan County Specifications, the County's Specifications shall control.

New Mexico Department of Transportation Standard Specifications, Special Provisions, and Supplemental Specification shall be interpreted using the following list. Reference listed to the right are to replace those on the left where those on the left appear in the text.

REFERENCE

REPLACE WITH

New Mexico Department of Transportation
Project Manager
Chief Highway Administrator
State
Engineer
Department
District Highway Engineer
District Construction Engineer

San Juan County PWD
County Project Manager
Public Works Director
County
Public Works Director
County
Public Works Director
County Project Manager

The following SPECIAL PROVISIONS shall supplement the above specifications:

August 23, 2019

SPECIAL PROVISIONS FOR SECTION 601: REMOVAL OF STRUCTURES AND OBSTRUCTIONS

The 2019 Edition of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction shall apply in addition to the following:

601.3.2.1 Bridge Deck Removal

601.3.2.1.1 Existing Bridge No. 8130

Existing Bridge No. 8130 is over the San Juan River and requires a bridge demolition and replacement. The new Bridge deck is to be constructed in phases and traffic is to be detoured in accordance with the Bridge Construction Staging as shown in the Plans. All Bridge structure elements to be removed and reconstructed shall be in accordance with the Bridge Construction Staging as shown in the Plans. The use of polyethylene tube coffer dams is required for the removal of the piers located in the waterway. Earthen coffer dams will not be allowed. Other methods may be approved but must minimize the impact to the San Juan River and protected species.

601.3.2.1.2 Bridge Structure Element Removal Plans

The Contractor shall submit complete Bridge structure element removal Plans for each Bridge structure element that is to be removed to the Project Manager for review and comment. The Bridge structure element removal Plans shall detail the procedures, sequences, and all features required to perform the removal in a safe and controlled manner.

The Bridge structure element removal Plan shall include, but not be limited to, the following:

1. The removal sequence, including staging of removal operations;
2. Equipment locations on the Structure during removal operations;
3. Methods and details for member or connection strengthening;
4. Methods and details for supporting or stiffening requirements;
5. Temporary support shoring or temporary bracing;
6. Details, locations, and types of protective covers and containment to be used;
7. Measures to assure that people, property, utilities, and improvements will not be endangered or damaged;
8. Calculations showing the existing AASHTOWare Bridge Rating model is available from the County for analysis;
9. Details and measures for preventing Material, Equipment and debris from falling into the San Juan River below and/or damaging existing and new Bridge components; and
10. Methods and description of hauling plan for removal of concrete and debris.

The Bridge structure element removal Plan shall be prepared and signed by a New Mexico licensed Professional Engineer (Professional Engineer). The Professional Engineer shall have at least ten (10) years experience and shall have been in responsible charge for at least three Bridge demolition projects. The design calculations shall be adequate to demonstrate the stability of the Structure during all stages of the removal operations. Calculations shall be provided for each stage of Bridge structure element removal and shall include dead and live load values assumed in the design of protective covers. At a minimum, a stage shall

be considered to be removal of the deck, in any span.

Temporary support shoring, temporary bracing, and protective covers, as required, shall be designed and constructed in accordance with Standard Specifications Section 511.3.2, "Temporary Works and Falsework". The Contractor shall submit the Bridge structure element removal Plans and all calculations to the Project Manager 30 Days prior to beginning any removal Work. The Contractor shall not commence Work until the Removal Plans have been approved by the Project Manager.

The assumed horizontal load to be resisted by the temporary support shoring and temporary bracing, for removal operations only, shall be the sum of the actual horizontal loads due to Equipment, construction sequence or other causes, and the wind loads shown on the Plans, but in no case shall the assumed horizontal load to be resisted in any direction be less than five percent (5%) of the total dead load of the structure element to be removed.

The Contractor's Professional Engineer shall be present at all times when Bridge structure element removal operations are in progress and shall inspect the Bridge structure element removal operation and report in writing on a daily basis the progress of the operation and the status of the remaining Structure. A copy of the daily report shall be available at the site of the Work at all times. Should an unplanned event occur or the Bridge operation deviate from the approved Bridge structure element removal Plan, the Contractor's Professional Engineer shall submit immediately to the Project Manager, for his review and approval, the procedure of operation proposed to correct or remedy any occurrence.

601.3.2.2 Special Site Conditions

The Contractor shall identify any special site conditions in the field that may impact the safe and controlled removal of a Bridge structure element and include Plans for mitigating those conditions on the Bridge structure element removal Plan. Special site conditions may include, but are not limited to the following:

1. Fracture-critical or non-redundant details and Bridge geometries;
2. Damaged or deteriorated portions of the Bridge deck;
3. Damaged or deteriorated Bridge girder members;
4. Damaged or deteriorated Bridge bearings and/or supports;
5. Debris or obstructions under the Bridge
6. Presence of asbestos, red lead, or other hazardous Materials; and
7. Active waterway under the bridge during construction.

Special site conditions shall be reviewed at the Pre-Construction Conference.

Add the following to **Section 601.5.1: Work Included in Payment:**

4. Bridge structure element removal Plan and all calculations stamped by a New Mexico licensed Professional Engineer including changes to the Bridge structure element removal Plan.

November 11, 2020

**SPECIAL PROVISIONS
FOR
SECTION 702: CONSTRUCTION TRAFFIC CONTROL DEVICES**

The 2019 Edition of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction shall apply in addition to the following:

702.2.6 Temporary Signal

The temporary traffic signal utilized at the bridge as part of the traffic control will be provided and maintained by San Juan County.

702.3.3 Temporary Signal

The Contractor shall coordinate with the San Juan County Traffic Control Supervisor for any necessary maintenance or relocations of the temporary traffic signal. Relocation requests shall be provided a minimum of 7 days in advance of relocation.

Add the following to **Section 702.5.1: Work Included in Payment:**

1. Coordination with the San Juan County Traffic Control Supervisor is incidental to the Traffic Control Management and no additional payment or measurement shall be made.

SAN JUAN COUNTY

SECTION 9

NMDOT SUPPLEMENTAL SPECIFICATIONS

The New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction, latest Edition, are incorporated here by reference and shall govern the construction of roadway items for this project except where revised, amended or supplemented by the Special Provisions or Supplemental Specifications.

New Mexico Department of Transportation Standard Specifications, Special Provisions, and Supplemental Specifications shall be interpreted using the following list. Reference listed to the right are to replace those on the left where those on the left appear in the text.

REFERENCE

REPLACE WITH

New Mexico Department of Transportation Project Manager	San Juan County PWD County Project Manager
Chief Highway Administrator State Engineer	Public Works Director County Public Works Director
Department District Highway Engineer	County Public Works Director
District Construction Engineer	County Project Manager

The following SUPPLEMENTAL SPECIFICATIONS shall supplement the above specifications:

SUPPLEMENTAL SPECIFICATIONS INDEX

No Supplemental Specifications to the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction are in effect at this time.