



Request for Bids #274-HCD-FY26-11

Title: Rehab of 4213 Greencastle Court

Issue Date: June 1, 2026

Due Date: June 30, 2026
no later than 11:00 AM EST

LATE BIDS WILL NOT BE ACCEPTED

Issuing Department: Housing and Community Development

Direct all inquiries concerning this Bid to:

Nicholas Bambino

Redevelopment Projects Administrator

Email: Nicholas.bambino@raleighnc.gov

Rehab of 4213 Greencastle Court Bid Timeline

Provided below is a list of the anticipated schedule of events related to this solicitation. The City of Raleigh reserves the right to modify and/or adjust the following schedule to meet the needs of the project. All times shown are Eastern Standard Time (EST):

Bid Process	Date and time
Bid Advertisement Date	1 June, 2026
MANDATORY Pre-Bid Meeting	8 June, 2026, at 11:00 a.m.
Deadline for Written Questions	12 June, 2026
City Response to Written Questions (anticipated)	22 June, 2026
Submittal Due Date and Time, Bid Opening	30 June, 2026, at 11:00 a.m.
Selection Announcement	TBD

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CONTRACT REQUIREMENTS

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END OF DOCUMENT

ADVERTISEMENT FOR BIDS
POSTED: JUNE 1, 2026
CITY BID NUMBER: 274-HCD-FY26-11

Project: Rehab of 4213 Greencastle Court

Owner: City of Raleigh, North Carolina, Housing and Community Development Department,
421 Fayetteville St, Suite 1200, Raleigh, NC 27601
Contact: Nicholas Bambino – Redevelopment@raleighnc.gov

Engineer: John Duncan, Triangle Construction Management Company, Inc. 2617 Winton Rd,
Durham, NC 27707

Sealed Bids will be received until 11:00 am, June 30, 2026, at 421 Fayetteville St, Suite 1200, Raleigh, NC 26701, at which time and place bids will be publicly opened and read aloud for the construction of the Rehab of 4213 Greencastle Court project.

After Bids are opened, the Owner shall evaluate them in accordance with the methods and criteria set forth in the Instructions to Bidders. The Owner/City Council reserves the right to waive any informality or to reject any or all Bids. Unless all Bids are rejected, Award will be made to the lowest responsible and responsive Bidder, taking into consideration quality, performance and the time specified in the Bid Form for the performance of the Contract.

A Mandatory Pre-Bid Meeting will be held at 11:00 am, June 8, 2026, at 4213 Greencastle Court, Raleigh, NC 27601.

Requirements for pre-bid submittals of an “or-equal” are required within [10] days of the issuance of the Advertisement for Bids and in accordance with Section 00200, Instructions to Bidders.

The Project consists generally of the following major items: mechanical, plumbing, sheetrock, electrical, painting, windows, and exterior stairs.

Bidding Documents may be examined at Engineer's office and online by emailing john@triangleconstruction.net. Complete Bidding Documents may be obtained from the engineer at no cost.

With each request for Bidding Documents supply the following information: Company name, contact person, street address, phone number, and email address for Bidding point of contact; N. C. contractor's license with limitation and classification; indicate if the firm will be a Prime bidder, Supplier or Sub-Contractor.

Bidders will be required to show evidence that they are licensed to perform the work in the Bidding Documents as required by North Carolina General Statute, Chapter 87 and the Instruction to Bidders.

Bid Security in the amount of five percent (5%) of the Bid must accompany each Bid and shall be subject to the conditions provided in the Instruction to Bidders.

Pursuant to General Statutes of North Carolina Sections 143-128.2 and 143-131, and in accordance with City policy, the City of Raleigh encourages and provides equal opportunity for certified Minority and Woman-Owned Business Enterprise (MWBE) businesses to participate in all aspects of the City's contracting and procurement programs to include Professional Services; Goods and Other Services; and Construction. The prime contractor will be required to identify participation of MWBE businesses in their Bid, and how that participation will be achieved.

Furthermore, the City's goal is to contract or sub-contract fifteen percent (15%) of the contract amount to certified MWBEs on construction projects over \$300,000, or with contracts that include \$100,000 or more in state funding.

City of Raleigh
Janet Cowell, Mayor

END OF DOCUMENT

BIDDER'S CHECKLIST

This checklist shall be included as the first page of the submitted bidding documents. As outlined in Article 7 of the Bid Form section, the following items shall be included with the fully executed Section 00410 Bid Form:

A.	Required Bid security in the form of a Bid Bond (EJCDC No. C-430) or Certified Check (circle type of security provided); Bid Bond shall include an executed Power of Attorney.
B.1.	Acknowledgement of MWBE Policy – <u>due with bid</u>
B.2.	Identification of Certified MWBE Participation - <u>due with bid</u> <ul style="list-style-type: none"> • List all MWBE firms intended to be used.
B.3.	<p>Affidavit A, Listing of Good Faith Effort</p> <ul style="list-style-type: none"> • Earn at least 50 points • Submit if using <u>any</u> subs <p>Or</p> <p>Affidavit B, Intent to Perform Contract with Own Workforce</p> <ul style="list-style-type: none"> • Submit <u>only</u> if you are self-performing 100%. <p><i>Note:</i></p> <ol style="list-style-type: none"> 1. <i>Affidavit A or Affidavit B are <u>due with bid</u>.</i> 2. <i>Affidavit C or Affidavit D, and Letter of Intent due within <u>3 business days of being apparent LRRB. They are not due with bid.</u></i>
C.	Contractor's Certificates, Affidavit of Organization and Authority of Sworn Statement
D.	City of Raleigh – Contractor's Poor Performance Policy
E.	Non-Collusive Affidavit
F.	Notice to Contractor Regarding Intrusions Beyond Project Limits
G.	Evidence of authority to do business in the state of the Project (i.e., copy of contractor's license)
H.	RFB Addendum(s) - signed and dated (if applicable)
I.	Bid form, Form A, Form B – <u>fully completed</u>

BID BOND (PENAL SUM FORM)

Bidder Name: Address <i>(principal place of business)</i> :	Surety Name: Address <i>(principal place of business)</i> :
Owner Name: City of Raleigh Address <i>(principal place of business)</i> : 222 W. Hargett Street Raleigh, NC 27601	Bid Project <i>(name and location)</i> : Bid Due Date:
Bond Penal Sum: Date of Bond:	
Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.	
Bidder	Surety
_____ <i>(Full formal name of Bidder)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature) (Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.</i>	

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 will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs 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 will 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 does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will 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 will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder must 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 Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will 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 will 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 governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

CONTRACTOR'S CERTIFICATES
AFFIDAVIT OF ORGANIZATION AND AUTHORITY
AND
SWORN STATEMENT

STATE OF _____)

COUNTY _____)
OF _____

_____ being the first duly sworn on oath deposes and says that the Bidder on the attached Bid is organized as indicated below and that all statements herein made are made on behalf of such Bidder and that this deponent is authorized to make them.

(Fill Out Applicable Paragraph)

1. CORPORATION:

The Bidder is a Corporation organized and existing under the laws of the State of _____ and its President is _____ ; its Secretary is _____ , and it does have a corporate seal. The President is authorized to sign construction contracts and bids for the Company by action of its Board of Directors taken _____ a certified copy of which is hereto attached. (Strike out last sentence if not applicable.)

2. PARTNERSHIP:

The Bidder is a partnership consisting of _____ and _____ , partners doing business under the name of: _____

3. SOLE TRADER:

The Bidder is an individual and if operating under a trade name, such trade name is as follows: _____

4. ADDRESS:

The business address of the Bidder is as follows: _____

Its phone number is _____

Bidder
By: _____

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

Notary Public

My Commission Expires:

CITY OF RALEIGH
CONTRACTOR'S POOR PERFORMANCE POLICY

RESOLUTION NO. (1992) 790

A RESOLUTION TO REGULATE THE PARTICIPATION IN CITY CONSTRUCTION PROJECTS BY CONTRACTORS WHO MAY NOT BE CAPABLE OF TIMELY AND PROPER COMPLETION OF CITY PROJECTS.

WHEREAS, the City of Raleigh wishes to minimize cost and inconvenience to the citizenry caused by the failure of contractors to complete projects in a timely manner in accordance with approved project schedules; and

WHEREAS, North Carolina law allows cities to award bids to responsible bidders and the inability to complete work on time is one indication of a lack of responsibility.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RALEIGH:

Section 1. That the City Manager may disqualify bidders from participation in bidding and award of contracts for city construction projects based on the following conditions existing simultaneously:

- A. The dollar value of the work completed is less than the dollar value of the work which should have been completed on the basis of the contractor's approved progress schedule by more than twenty percent of the current contract amount. The dollar amount of the work completed will be the total estimate to date shown in the latest partial pay estimate. The current contract amount will be the contract estimate plus accumulated overruns and less accumulated underruns shown in the latest partial pay estimate.
- B. The percentage of the work completed is less than the percentage of contract time elapsed on the work by more than twenty percent. The percentage of work completed will be the dollar value of the work completed as defined above divided by the current contract amount as defined above. The percentage of contract time elapsed will be the number of calendar days elapsed as shown in the latest partial pay estimate divided by the total contract time in calendar days.

Section 2. The City Manager shall not include any late days which are caused by the City in any of his calculations directed at determining bid status.

Section 3. All City construction project specifications shall contain a specific provision clearly outlining the policies set out in this Resolution, including the criteria for determining whether a contractor is behind schedule, and the specifications shall clearly state the City's intent to enforce the provisions of this Resolution.

Section 4. The terms of this Resolution shall apply only to contracts for which the specifications for bidders are issued after the effective date of this Resolution.

Section 5. Any contractor who wishes to contest the decision of the City Manager declaring ineligibility may appeal to the City Council by delivering a notice of appeal to the City Clerk no later than ten days after receipt of the City Manager's decision. The notice of appeal shall clearly set out the reasons why the Contractor believes that the terms of this Resolution have been inappropriately applied or the equitable arguments for not applying this Resolution's terms. When considering an appeal the City Council shall consider, among other things, the report of the City manager, the notice of appeal, and the contractor's current status on any other current City contracts and its performance on any other contracts to which the contractor and the City have been parties to within the two calendar years immediately preceding the filing of the notice of appeal.

Section 6. Bidders so disqualified shall remain disqualified for any period in which they are still in conflict with the schedule provisions of this section.

Section 7. This Resolution is effective upon adoption.

ADOPTED: 10/6/92

EFFECTIVE: 10/6/92

I have read and understand the City of Raleigh's policy as stated above.

Signature

Printed Name

Title

Date

NON-COLLUSIVE AFFIDAVIT

State of _____)
)ss.
County of _____)

First being duly sworn deposes and says that:

- (1) He is the _____
(Owner, Partner, Officer, Representative or Agent)
of _____ the Bidder that has submitted the attached Bid;
- (2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- (3) Such Bid is genuine and is not a collusive or sham Bid;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted; or to refrain from bidding in connection with such Contract; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Bidder, firm, or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Contract;
- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any other of its agents, representatives, owners, employees or parties in interest, including this affidavit.

BY _____

PRINTED OR TYPED NAME _____

ITS _____
(Title)

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

Notary Public My commission expires _____

END OF AFFIDAVIT

NOTICE TO CONTRACTOR REGARDING INTRUSIONS BEYOND PROJECT LIMITS

The Contractor and Owner hereby acknowledge that the Owner has acquired permanent and temporary easements on private property for the construction of the Project (the "Easements"), and that the Easements, together with public street rights-of-way (and previously acquired easements) comprise the sole areas where the Contractor is allowed to work on the Project, or to use for mobilization, access, staging, storage, and other purposes associated with the Project.

ANY OCCUPANCY OF OR INTRUSIONS ONTO PRIVATE PROPERTY OUTSIDE THE EASEMENTS OR RIGHTS-OF-WAY OWNED OR CONTROLLED BY THE CITY WILL CONSTITUTE A TRESPASS UPON PRIVATE PROPERTY AND MAY RESULT IN SERIOUS LEGAL CONSEQUENCES FOR THE CITY OF RALEIGH.

The Contractor shall be solely responsible for any intrusions onto private property outside the Easements or rights-of-way owned or controlled by the City. The Contractor hereby agrees to save, defend, hold harmless, and indemnify the City from all actions, claims, and liabilities , arising from such actions including, but not limited to, the payment of attorney's fees.

The only exception to the above stated limitations on the Contractor's work area will be in those instances where the Contractor has independently negotiated and secured agreements for temporary work and/or access privileges from Property Owners. These independently negotiated agreements must be in writing, and a copy of any such agreement shall be provided to the City in advance of any use or occupancy of private property pursuant to the agreement. The terms of any independently negotiated agreement shall clearly express to the Property Owner that the Contractor is seeking such use, occupancy, or access independently from the City of Raleigh and its Contract with the City of Raleigh, and that the Contractor shall be solely responsible for activities carried out on such areas.

I have read and understand the City of Raleigh's policy as stated above.

Signature

Printed Name

Title

Date

4.17 Section 3

At a minimum, contractors shall complete the following tasks as part of the bid preparation process. Verification by the City will be part of the bid review process. The tasks will ensure the contractor's understanding of the applicability of Section 3 requirements to the project.

1. Complete the Section 3 Business Certification form indicating the contractor's status as a Section 3 business concern and employment of Section 3 residents.
2. Complete the Estimated Project Work Force Breakdown and Estimated Project Subcontractor Breakdown forms (Form A and B) indicating the preliminary estimation of new employment or contracting opportunities generated due to the proposed HUD funded activity and the Section 3 numerical goals associated with training and employment opportunities.
3. Complete the Section 3 Affirmative Action form demonstrating the contractor's understanding of Section 3 requirements.

All Section 3 covered contracts shall include the following clause (referred to as the Section 3 Clause):

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments

under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

5.8 Form A: Estimated Project Work Force Breakdown

Form A: Estimated Project Work Force Breakdown

Name of Contractor	
Project Name	
Period Covered	
Date Submitted	

NOTE: If there are no available job opportunities for this construction project, you must provide a written explanation as to why. If needed, use additional sheets.

Job Category	Total Estimated Positions Needed for Project	Number of Positions Occupied by Permanent Employees	Number of Positions Not Occupied	Number of Positions to be Filled with Section 3 Residents
Total Number of Estimated Job Opportunities				

If there are no available job opportunities, please provide explanation here.

5.9 Form B: Estimated Project Subcontractor Breakdown

Form B: Estimated Project Subcontractor Breakdown

Name of Contractor	
Project Name	
Period Covered	
Date Submitted	

Name/Address of Subcontractor	Trade Category	Section 3 Business?	Subcontract Amount
Total Subcontract Amount			

4213 Greencastle Court, Raleigh, NC 27604



Brief Description:

This apartment building was built in 1979. The project is owned by the City of Raleigh. The total square footage of all four apartments is approximately 4,320 sf. Major renovations include:

- Mechanical
- Plumbing
- Electrical
- Sheetrock
- Painting
- Windows
- Exterior Stairs

**CITY OF RALEIGH
HOUSING REHAB PROGRAM
BID FORM**

PROPERTY ADDRESS: 4213 Greencastle Court, Raleigh, NC 27604

Pre-bid Walk through Date: June 8, 2026 @ 11:00 am.

Sealed bid is due in the Community Development Office, One City Plaza, 12th floor, Fayetteville Street, Raleigh, before 11:00 am on June 30, 2026.

1. I, the undersigned have inspected the above listed property/properties and have familiarized myself with the plans and specifications dated January 29, 2026, given to me as bid documents for this project, and understand the character and extent of the work as described.

2. I have seen a copy of the standard Terms and Conditions Statement (which will constitute the first part of my construction contract) and understand the City of Raleigh construction standards and my other contractual responsibilities.

3. I propose to furnish all labor, materials, equipment, permits and bonds (if required) necessary to perform the work according to prevailing professional standards for the lump sum of:

Base Bid (excluding all alternates):	\$ _____.
Total for Abatement Items	\$ _____.
Total of all alternates	\$ _____.
GRAND TOTAL=	\$ _____.

4. If I am offered a contract for this project, I am available to begin work on _____, and I believe I can complete the project in _____ weeks.

5. I propose to use the following subcontractors on this project:

Electrician: _____	License #: _____
Plumber: _____	License #: _____
Mechanical: _____	License #: _____

6. This bid will be good for 60 days. If a contract is not executed before that time expires, I may decline the contract or propose a renegotiation of the contract price.

7. I testify that I have not colluded with any other person or firm with regard to the submission of this bid:

General Contractor Company Name: _____	Tel#: _____
Principal in Charge: _____	Date: _____

Witness: _____	Date: _____
----------------	-------------

Fax#: _____	E-mail Address: _____
-------------	-----------------------

INSTRUCTIONS TO BIDDERS

INVITATION TO BID AND BID SUBMITTAL:

You are invited to submit a bid for the rehabilitation of the above-listed property/properties.

ALL WORK INDICATED on any documents attached to the BID FORM is included in the scope of work and shall be assumed to be included in the contractor's bid price.

The attached BID FORM must be used to submit a bid on this project. Any changes to these forms, missing information, or any other irregularities in the bid package, may be cause for rejection of the bid and disqualification of the bidding contractor.

Drawings and specifications are attached for your review. You must indicate a price for every line item in the specifications, attach them to this Bid Form, sign the Instructions to Bidders, and submit this entire package as your bid.

SEALED BIDS are due in the Community Development Department office - Room 101 at 310 West Martin Street - on or before the time indicated on the BID FORM. Envelopes must be clearly marked with the project address, the name of bidding contractor, date and time of bid opening.

MINIMUM CRITERIA FOR BIDDING CONTRACTORS:

When the total value of the base bid (excluding any alternates) exceeds \$30,000 the bidding contractor shall submit evidence of proper State General Contractor's License.

Bidding contractors must be able to anticipate their availability to begin work on this project within 60 days. Contractors who are not available to start within that time are asked not to submit bids.

Contractors must have a CONTRACTOR'S APPLICATION on file or worked for the City of Raleigh's Community Development Department before BIDDING. If the low bidding contractor has not worked for the City of Raleigh Community Development Department before or has not submitted a complete CONTRACTOR'S APPLICATION form prior to BIDDING that bid will be rejected. Contractors who do not meet the basic criteria set by the C.D. Department will not be offered contracts for work, even if they present the lowest bid.

Any of the followings may be causes for action against a contractor under this program:

- Failure to submit bids in good faith
- Making any promises or deals to the client while in the bid process
- Any act of deceit, fraud or willful misrepresentation
- Failure to comply with the agreed contract schedule
- Poor quality work
- Working under the influence of alcohol or drugs or allowing others to do so
- Failure to manage the site properly, including failure to pay subcontractors on time
- Price gouging
- Neglecting to attend to warranty work in a timely manner

We wish to highlight the fact that the funding for this program is provided by a federal agency and that discrimination against any employee, subcontractor, applicant for employment or any other party involved in the contract, for reasons of race, religion, sex, sexual preference, age, handicap or national origin is strictly prohibited.

It is the goal of the funding agency that contractors and subcontractors will be drawn as much as possible from the neighborhoods in which the work is being done.

ABOUT THE CONSTRUCTION DOCUMENTS:

Specifications are written as a performance specs. For the sake of brevity, detailed installation instructions are not spelled out. Plans are diagrammatic and not intended to indicate all details. The general contractor is responsible for executing the work in conformity with the highest professional standards for all trades.

All work indicated on any document attached to the BID FORM is included in the scope of work and shall be assumed to be included in the contractor's bid price.

The project property is made available at a pre-bid walk-through meeting so that the contractor may inspect all existing conditions affected by the proposed work. Contractors are encouraged to ask questions of the Community Development Rehab Specialist at that time to be sure they understand the precise extent of the work called for.

All bids must use a copy of the specifications distributed by the C.D. Rehab Specialist at the time of the pre-bid walk-through.

GENERAL CONSTRUCTION STANDARDS:

For the sake of brevity, many of the customary stipulations as to the quality of work are omitted here. It should be understood that the City of Raleigh looks for a high standard of professional performance and that work not measuring up to this standard will be rejected.

All work governed by a code shall be in compliance. It is the contractor's responsibility to see that all subcontractors who require licenses have them, that permits are applied for when that is required by City codes, that applications for permits are complete and correct, and that all inspections are passed in a timely manner.

Contractors are to furnish the homeowner with the manufacturer's or supplier's written operating manuals, and/or written warranty statements wherever applicable. And the general contractor must provide an ONE YEAR WARRANTY on all work under the contract and a THREE YEAR WARRANTY on any roof-related work.

No hazardous or toxic materials may be used on this project. No lead-based paint may be used.

All new finishes shall match, as closely as possible, original or adjacent finishes. This is especially important in a property in a designated historic district. If this site is in a historic district, the specifications will clearly say so.

All dirt and debris created by this project must be removed by the contractor on a regular basis and the site must be kept broom clean at all times.

When adjacent property might be affected by project work, the contractor is responsible for protecting the neighbor's property.

Contractors must provide homeowners with a reasonable assortment of finish samples from which they may select their colors or styles of finishes. The contractor shall keep a record of such selections for the project file.

Any damage to surfaces adjacent to work areas shall be corrected by the contractor before the work is deemed to be complete.

ABOUT DOING THE WORK AND GETTING PAID:

All work indicated on any document attached to the BID FORM is included in the scope of work and shall be assumed to be included in the contractor's bid price.

Any change to the scope of work, the price of work, or the schedule is only valid after the execution of a CHANGE ORDER. Change orders must be signed by the contractor, the property owner and the Community Development Rehab Coordinator before they are fully executed. The contractor assumes all the risk if he/she does work without authorization.

Work may NOT begin until the contractor executes a contract with the property owner and receives a written PROCEED NOTICE. After that, work must begin in earnest either on the stipulated start date or within 10 days of the Proceed Notice date if no other date is stipulated.

There is a penalty for missing the completion date, and interim payments are tied to interim percentage completion targets. (See Terms and Conditions Statement)

Payments are generally issued as single- party checks to the contractor. They are generally available about 30 business days after a draw value is established and approved.

INSURANCE AND WARRANTY FUND REQUIREMENTS:

Contractor agrees to purchase at its own expense insurance coverage to satisfy the following minimum requirements. A certificate reflecting the following minimum coverage shall accompany this Contract:

Workers' Compensation Insurance - Limits of no less than \$1,000,000 each accident, each employee and policy limit. Waivers of Indemnity are not recognized by the North Carolina Department of Insurance and will not be accepted by the City of Raleigh.

Commercial General Liability - Combined single limits of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. This insurance shall include Comprehensive Broad Form Coverage including contractual liability. 'City of Raleigh is named additional insured as their interests may appear' must be endorsed onto the policy and listed on the Certificate of Insurance.

Commercial Automobile Liability - Limits of no less than \$1,000,000 Combined Single Limit. Evidence of commercial automobile coverage is only necessary if vehicles are used in the provision of services under this Agreement and/or are brought to a City of Raleigh site. 'City of Raleigh is named additional insured as their interests may appear' must be endorsed onto the policy and listed on the Certificate of Insurance.

All insurance companies must be licensed in North Carolina and be acceptable to the City of Raleigh's Risk Manager. The contractor shall be required to provide the City no less than thirty (30) days notice of cancellation, or any material change, to any insurance coverage required by this Contract.

SELECTING THE WINNING BIDDER:

In making a final selection for the award of the general construction contract, consideration will be given to the proposed subcontractors, their past work, general qualifications, financial stability, etc. Subcontractors are bound by the terms and conditions of the general contractor's contract insofar as it applies to any work in their trade.

The City reserves the right to reject any and all bids or to waive any formalities in the bid process.

I understand and agree to comply with the entire bid instructions listed above:

Bidder's Company Name

Owner's Signature

NOTE: The City of Raleigh standard TERMS AND CONDITIONS STATEMENT is available for your review. If you wish to see this document, contact John Duncan, the Rehab Specialist at 919-616-2646.

CITY OF RALEIGH
COMMUNITY DEVELOPMENT DEPARTMENT
REHABILITATION WORK WRITE-UP

OWNER: City of Raleigh (John Long)
ADDRESS: 4213 Greencastle Court, Raleigh, NC 27604
TELEPHONE NO.: (919) 996-4330
WORK:
INSPECTED BY: John Duncan
DATE OF INSPECTION: May 5, 2021
USE SPECIFICATIONS DATED: January 29, 2026

GENERAL

For the sake of brevity, descriptions of work in this write-up are outlined in nature. It shall be assumed by all parties that work described in this write-up will be finished completely in every respect and ready for use by Owner. ALL WORK SHALL CONFORM TO RECOGNIZED STANDARDS OF QUALITY AND WORKMANSHIP AND MATERIALS USED SHALL BE NEW AND APPROPRIATE FOR THE USE INTENDED. ALL WORK SHALL CONFORM TO APPLICABLE CITY AND STATE CODES.

The Contractor is to keep the job clean always. The Contractor is to store trash and debris in a location acceptable to the Owner and is to haul off this trash at least once a week. Upon completion, the Contractor shall clean all new plumbing fixtures and rod-out plumbing lines. The Contractor shall leave the job in a clean condition. Where the windows have been painted by the Contractor, the glass shall be cleaned of all paint, including paint that was present before the Contractor's work began.

Contractors are reminded to make sure that all color and material choices that involve the Owner are documented. This is to protect all parties and to avoid confusion.

Where shown in this write-up the contractor is required to make allowances for either labor, material or both. SHOULD THE OWNER CHOOSE AN ITEM WITH A HIGHER COST THAN THE CONTRACTOR'S COST ALLOWANCES, THE ADDITIONAL COSTS WILL BE BORNE BY THE OWNER AND NOT BY THE CONTRACTOR OR THE COMMUNITY DEVELOPMENT DEPARTMENT.

Refer to the attached drawings.

Owner's Signature

Date

SPECIFICATIONS DATED: January 29, 2026

General Notes:

1. All painting must be of the highest quality. The surfaces must be prepared and inspected before painting.
2. The primer and top coats must be the same tint.
3. Paint and Primer shall be the following or approved equal:
 - a. Sherwin Williams "Super Paint", "Resilience", "Duration" or "Emerald".
 - b. Behr Marquee
4. Contractor shall provide a porta-potty during the construction process for contractor's and resident use. Maintenance of the porta-potty is the responsibility of the contractor.
5. **This project will require Bid, Performance and Payment bonds. All bidders must provide a Bid Bond in the amount of 5% of their bid. This should be provided in the form of a check submitted with the bid. The check is to be made out to the City of Raleigh Housing and Neighborhoods Department referencing the project. Bid Bond checks will be returned to all bidders once the low bidder has been determined. The Bid bond will be returned to the awarded contractor once the contract is executed. Payment bonds and Performance bonds will be required of the winning bidder. These surety bonds are to be provided in the amount equal to bid and subsequent contract.**
6. **Unless noted otherwise, work shall include all FOUR apartments.**
7. **Please note that funding for this project will require following Section 3 guidelines.**

COST

100. SITEWORK AND DEMOLITION

_____ 104. Remove the existing parking area, sidewalks and concrete driveway completely and install new concrete parking and driveways. The new concrete shall be the same size as the existing. Include install a new wood wheel bump as the existing. The concrete shall be at least 4" in thickness with 3000 psi with fibermesh reinforcement and with at least 4" of ABC base.

300. EXTERIOR ENVELOPE

_____ 303. Remove completely the existing front entrance steps, rails, columns and landings and install new wooden steps, rails, columns and landings per current codes. New entrances shall be the same size and style as existing. Include staining the new wooden entrances.

_____ 304. Install a new shingled roof over the complete building. Remove all the old shingles, felt paper and deteriorated sheathing. The contractor shall assume a total of 160 sf of sheathing to replace. **Include replacing all rotten fascia and boxing.** Install new #15 felt paper, new 215#, Class A, Architectural style fiberglass shingles with thirty-year manufacturer's guarantee, flashing, drip edge, shingle-over type ridge vent (along the entire length of all ridges), and vent boots complete. Color choice of shingles by Owner.

_____ 306. Install new 5" seamless pre-finished aluminum gutters and standard down-spouts, with concrete splash-blocks. Gutters to drain away from the foundation of the house. Regrade to ensure proper drainage.

308. Prepare and insulate the following areas:

Ceilings – R38 (Include insulating between the floors).
Exterior Walls -R-15
Walls between the units – R-11

317. Remove all the existing siding, corner boards, soffits and fascia boards and install approved vinyl siding. Note: Most of the exterior is brick. Siding shall be at least .004” in thickness, textured, and double 4.5 clapboard style. Install insulation board underneath siding with no gaps. Includes all items where applicable such as corner boards, window/door casings, eaves, gutter boards, gable trim, window sills, boxing, louver trim, and all new exterior perforated vinyl soffits. Color and style choice by the City of Raleigh to be determined later. Also install perforated soffits and new fascia boards. Also include in your bid the following: NOTE: Include replacing the areas at the decks from the patio doors.

1. Remove all sheathing and insulation boards and replace them with new OSB sheathing.

400. DOORS

403. Install eight exterior doors. All the exterior doors shall be a pre-hung flush fiberglass door. All entrance doors shall have a peep-hole. Include new dead bolt and passage locks on the front and storage room doors. Locks shall be Schlage Saturn AL series (brass finish #605) - keyed alike.

405. Remove the existing four patio doors and install new patio (sliding) doors.

407. For all interior doors install new Schlage Plymouth #605 series locks at all locations, including new strikes. Include installing privacy locksets for each bathroom and bedroom. Owner must approve of type of lock before installation. Make all necessary adjustments to the lock bores and mortises for proper operation.

409. Unless noted otherwise, prepare all interior door openings and install pre-hung 6-panel Masonite door units with split jambs, pre-bored, and cased both sides. Swing door sizes shall be per the attached drawings. For the utility room closet, install a new bi-fold door. Include all adjustments necessary to framing or flooring for proper fit of stock sizes.

410. Install baseboard mounted door bumpers as required for each door.

500. WINDOWS

504. Remove the three windows and replace with matching windows. Include security sash locks. Repair/finish all areas disturbed by this operation, including the replacement/repair (if necessary) and prepping/painting of all interior trim (See painting spec).
NOTE: WINDOWS SHALL BE LOW E, ARGON FILLED WITH A U-FACTOR AND SHGC RATING OF 0.3 OR LESS - VERY IMPORTANT.

600. INTERIOR FINISHES

601. Remove all the existing sheetrock including all wall and ceilings. Install new gypsum board on all walls and ceilings with a slick finish with no visible seams or screw holes. Use moisture resistant board on all walls and ceilings in the bathrooms, laundry room and around the kitchen cabinets. Note: Nails to be used only for hanging purposes; all sheetrock must be screwed into the walls. Finish work to be approved by rehab coordinator or owner before painting. Include installing new sheetrock in the storage room areas. **NOTE: INCLUDE INSTALLING 5/8 FIRERATED SHEETROCK ON THE PARTION WALLS BETWEEN THE UNITS.**

608. Prepare the total interior (unless otherwise noted) and install new vinyl plank flooring. Color and style choice by Owner, and installation approval by Housing Specialist. Install metal reducer strips where necessary as determined by the layout. For bidding purposes, the contractor shall have an allowance of \$3.00/sf for material cost of the flooring. Include install matching quarter round molding around total perimeter.

618. Install new kitchen base and wall cabinets/bath vanity with laminate countertops (w/splashguards) per attached drawing. Cabinets/vanity shall be SOLID WOOD. Hinges shall be of the self-closing variety and doors may be pulls, finger pulls, or knobs. Cabinets may be of traditional styling (with stiles) or frame-less. Countertops shall be post-form with all open ends (i.e., range space, etc.) capped with laminate. Vanities shall have matching end splash guards where applicable. Note: Owner reserves the right to choose a different cabinet style. For bidding purposes, the contractor shall have a material allowance of \$5,000/unit. All wall cabinets must be attached to blocking.

621. For the bathroom, install new accessories including a 24" towel bar, a shower rod, paper holder and a vanity mirror (mirror shall be the same width as the vanity/sink).

655. Remove all interior trim on windows, doors, and baseboard, and replace with new matching trim.

657. Install a full-length wooden closet shelf and a full-length rod in all the bedrooms closets.

658. For each window install new white aluminum mini-blinds.

670. Furnish and install new appliances. Appliances shall include a new refrigerator, and electric range. Owner shall choose the appliances but for bidding purposes contractor shall have a material allowance of \$10,000.00.

700. PAINTING (INTERIOR AND EXTERIOR)

701. For the entire building except the brick and vinyl siding areas, paint with approved paint as described in the beginning of this write-up. Paint shall cover completely. Prime new materials first. Caulk all cracks and joints completely. Wash all window and door glass (interior and exterior and including all storm panels).

703. Clean and prepare the total interior and paint with approved interior latex paint (all rooms and closets, etc.) Color choice by Owner. Include all doors, windows, jambs, moldings, walls, and ceilings. Paint shall cover completely and be of the highest quality. Paint the interior with approved paint as described in the beginning of this write-up.

Protect all areas during painting operation. USE OF PAINT CONTAINING LEAD IS PROHIBITED. NOTE: INCLUDE PAINTING THE EXTERIOR SIDE OF THE EXTERIOR DOORS.

Note #1: Do not install new textured (popcorn) paint.

NOTE#2: Contractor shall include in the bid the allowance of at least three different interior colors.

800. PLUMBING

_____ 801. Install a new sewer lines from the building to the main sewer line including all permits, fees and taping fee. Install all new drain, waste and vent lines in and under the building to meet current building codes. NOTE: INCLUDE REMOVING AND REPLACING AS REQUIRED THE SLAB ON GRADE AND SIDEWALKS.

_____ 802. Install new supply water piping with copper or approved equal. Include all piping from the meters to the building and all supply lines in & under the building. Include all valves (gate, pressure reducing valve, check valve etc.). Work includes seeding and strawing affected areas.

_____ 803. Prepare the bathrooms and the kitchens and install the following. Include all related piping. Provide approved plumbing access doors.

- 1 For the kitchen, a new 8" deep double bowl stainless steel sink with a Delta 420 single lever faucet or equivalent. Include a new sprayer and strainers.
- 2 A new Delta 520 MRU single level faucet in the bathroom installed in a new vanity.
- 3 A new American Standard H.C. or approved equivalent 1.6 gallon per flush commode. Include new toilet seat, wax seal and drain flanges. Color to be white.
- 4 A new 5-foot four-piece fiberglass tub with tub faucet. Faucet shall be a new three-hole Delta tub/shower faucet #2683C or approved equivalent. Installation includes all new drains, overflow, diverter, shower head, spout, curtain rod and all connections to ensure proper function. Do not install a spring-loaded type of stopper.

_____ 818. Remove the existing HWH and install a new electric water heater. Include all wiring, connections, piping and controls as required for a complete job. Install per all 900. HEATING, VENTILATION AND AIR CONDITIONING

_____ 902. Prepare and install an electrical range vent hood over range vented to the outside. The hood shall be a Broan, G.E., Whirlpool or pre-approved equal by the Housing Specialist. The color shall be white or almond, Owner's selected.

_____ 903. Install a new electric heating/ electric cooling system. **The system shall be at least 14.3 SEER2.** Install an interior thermostat. Design distribution for optimum efficiency utilizing oversized duct and 6x12 supply openings where required on longer runs. The return air location shall be approved by the Project Consultant. Use a low return 14" round

to 20x20 or 20x25 depending on mechanical contractor's design. Ductwork shall be vinyl insulated R-8 (**silver faced**), properly sealed, with straight-run installation (no kinks or loops). Equipment shall be Trane, Carrier, Rheem, York, (Goodman is not allowed) or pre-approved other. Finish all areas to match that are disturbed by this operation. NOTE: INCLUDE TO MEET CURRENT FIRE RATED CEILIGN STRUCTURE WHICH INCLUDE ADDING RADIATION DAMPERS. ALSO ADD DAMPERS AS REQUIRED FOR PLENUM AND BATH EXHAUST FANS.

DUCT WORK: Install R-8.0 (silver faced) flex duct, without rips in the inner or outer lining. Include installing a metal saddle under all hangers to keep the ducts from having restrictive air flow. All joints, connections, seams and holes in the duct system, air handler and the main supply and return connections should be sealed with duct mastic caulking and fiberglass mesh tape where applicable. **INCLUDE REPLACING ALL RETURN AND SUPPLY GRILLS.**

904. Prepare and install a ceiling exhaust fan/light combination unit for the bathrooms. Units are to be vented to the outside and connected to a separate wall switch. The fan must move a minimum of 75 CFM of air volume.

918. Prepare and install an approved external vent and 220-volt electrical outlet for the clothes dryer.

1000. ELECTRICAL

1003. Update the existing electrical system by doing the following. All work shall be complete and inspected for compliance with Local and State Building Codes.

- 1 Remove the existing panel boxes and install new 200 amp panel boxes. New panel boxes shall have space for at least 32 circuit breakers. Include all new circuit breakers.
- 2 Remove all outlets, switches and plates and install new. Add additional outlets and switches as may be required by current codes.
- 3 Install new ground fault outlets in the kitchen and bathroom. The number of the new ground fault outlets shall be per current codes.
- 4 Install new direct wired (with a battery backup) smoke/Carbon monoxide detectors per current codes. **NOTE: ALL DETECTORS SHALL BE CO TYPE (NOT JUST ONE AS PER CODE).**
- 5 Note: Bathroom exhaust fans must be installed on a separate switch.
- 6 Install a new front and rear doorbell system.

1006. Install new light fixtures for each room (including the bedrooms). Include installing a new ceiling fan with light kit in the living room on a separate wall switch. Unless noted otherwise, all other lights shall be a new 2-bulb flush mount ceiling light fixture (\$25.00 each material allowance) with a wall switch. The main kitchen light fixture shall be selected by the owner with a material allowance of \$200.00. All non-fluorescent ceiling light fixtures must have sealed globes. **NOTE: INCLUDE ADDING FAN BOXES AS REQUIRED FOR CURRENT CODES.**

1007. Install a new wall mounted light fixture with a separate wall switch in the bathroom. The location shall be above the vanity mirror.

_____ 1008. Install a new exterior light fixture at each exterior door. Include a separate wall switch and new wiring.

_____ 1009. Install wall mounted telephone jacks and TV jacks in the all the rooms except the closets and bathroom.

Below is for the bidders' information only. Bidders should assume the following submittals will be required and where specified the following materials will be installed.

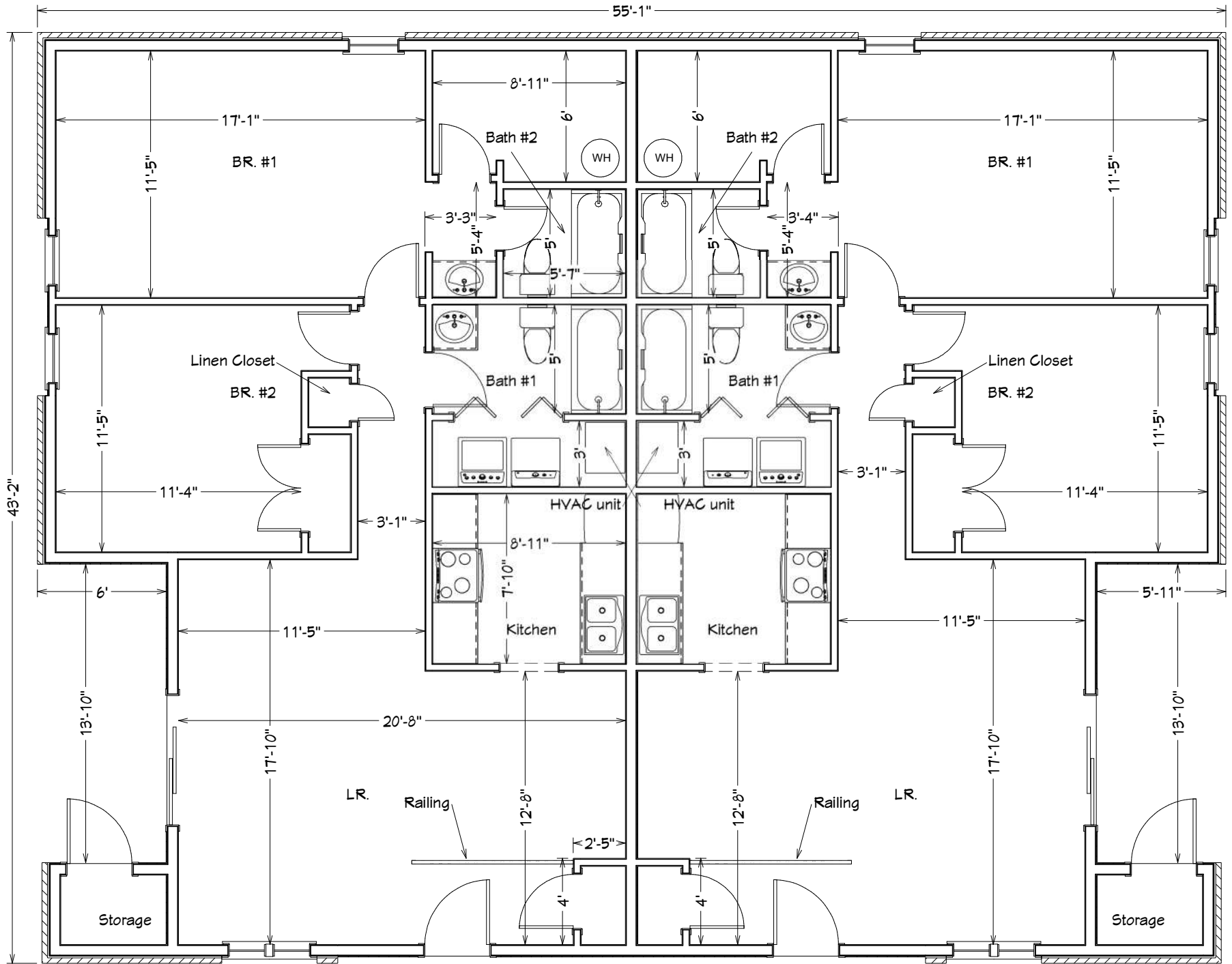
1. Want all submittals as soon as possible. All submittals must be checked by the contractor, stamped and signed. If the substitute product is submitted it needs to state and point out deviations. Submittals should be furnished in sufficient quantity to allow (2) for Owner and adequate number for contractor and subcontractor's use. A set of contract documents and approved submittals need to be on the job site.
2. Shingle roofing - 25 yr. Certaineed Shingles – color is Weathered Wood.
3. House numbers - 3” black numbers.
4. Front Exterior entry door. – See write-up.
5. Door locks and hardware – Use what is specified in the specifications.
6. Windows - Catalog cut.
7. Mini blinds – Aluminum
8. Bathroom accessories - catalog cuts.
9. Cabinets - CSC Cabinets and Design Contact Person: Kala Dunn ka-la@csc cabinetsanddesign.com 919-590-2614 Color: Essential Gray (must specify sizes) Hardware: Square Knob (Black) DH-K92430BK.
10. Paint - Sample area for approval.
11. Paint - color chips, type and brand of paint (need to use the type specified - no other substitutes will be accepted). Interior wall color Olympus White SW6253 Eggshell. Exterior colors will be determined later.
12. Plumbing fixtures: – Used what is specified.
13. HVAC equipment - data sheets and use a brand that is specified.
14. Bath and Kitchen exhaust fans - data sheets.
15. Fridge: [Frigidaire 18.3-cu D Top-Freezer Refrigerator \(White\) Garage Ready FFTR1814WW at Lowes.com](#) we do purchase the icemaker kit that is sold separately : Item #IM117000
Stove: [Hotpoint 30-in 4 Burners 5-cu D Freestanding Electric Range \(White\) RBS330DRWW at Lowes.com](#)
Dishwasher: [Frigidaire 24-in Front Control Built-In Dishwasher \(White\) ENERGY STAR, 55-dBA Standard Sound Level FFCD2413UW at Lowes.com](#)
Light Fixtures: Flush Mount Light- See Link [Project Source 2-Light 13-in San Nickel Led, Flush Mount Light \(2-Pack\) 40803 at Lowes.com](#)
Kitchen Faucet: [Project Source Tucker Matte Black Single Handle Pull-down Kitchen Faucet with Sprayer \(Deck Plate Included\) 51-K814-PS-MB at Lowes.com](#)
Bathroom Faucet: [Project Source Webber Chrome 4-in centerset 2-Handle WaterSense Bathroom Sink Faucet with Drain and Deck Plate 4012460C-L at Lowes.com](#)
Tub and Shower Combo: [Project Source Everfield Polished Chrome 3-handle Single Function on Round Bathtub and Shower Faucet Valve Included 834X-4101 at Lowes.com](#)
Flooring: Vendor: YL Remodeling- Arturo Leon 919-591-5759/ Max Plank-Sarah Collection Color: Winter Oak Thickness: 5.0mm/12 mil Edge: Micro belveled 1595 sqD per pallet
Bathroom Vanity Light: [KAWOTI Nolan 22-in 3-Light Brushed Nickel Transitional Vanity Light 21162 at Lowes.com](#)

Exterior Lighting: [Project Source Morlake 1-Light 8.25-in H Black Outdoor Wall Light 40683 at Lowes.com](#)

Schedule of Values for 4213 Greencastle Court, Raleigh, NC 27604

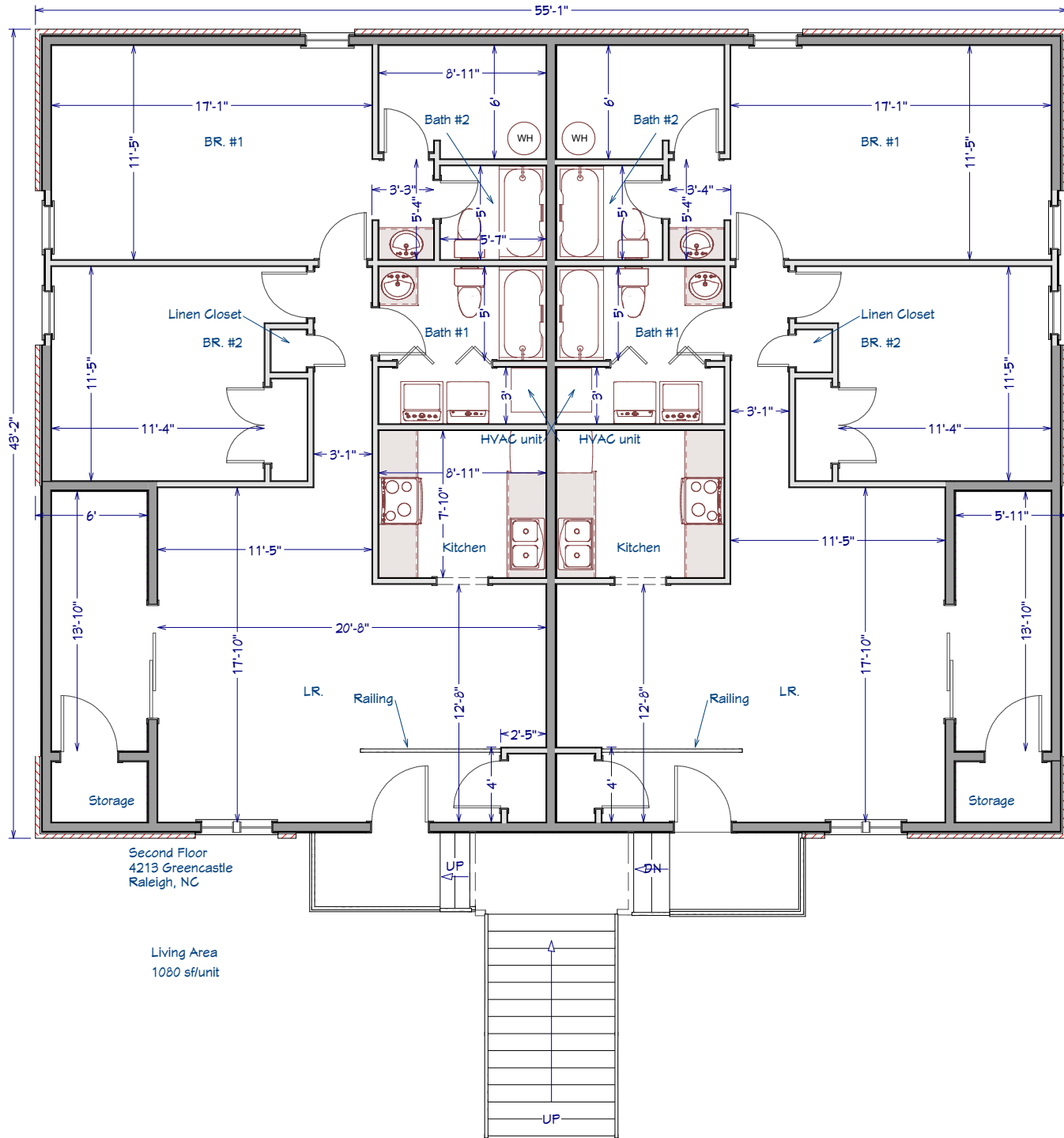
Item Number	Description	Schedule of Values
General	Bid, Payment and Performance bonds	
104	Concrete work	
303	Front entrances	
304	Roof	
306	Gutters/downspouts	
307	Termite treatment	
308	Insulation	
317	Vinyl siding	
403	Exterior doors	
405	Patio doors	
407	Interior locks	
409	Interior doors	
410	Door bumps	
504	Windows	
601	Sheetrock	
608	Vinyl Plank Flooring	
618	Cabinets	
621	Bathroom accessories	
655	Trim	
657	Closet shelves and rods	
658	Blinds	
670	Appliances	
701	Exterior painting	
703	Interior painting	

801	Sewer lines	
802	Supply lines	
803	Plumbing fixtures	
818	Water heater	
902	Range exhaust fan	
903	HVAC system	
904	Bath exhaust fans	
918	Dryer vent	
1003	Electrical updates	
1006	Light fixtures	
1007	Bathroom light fixtures	
1008	Exterior light fixtures	
1009	Cable/telephone jacks	
Total	Rehab section	



First Floor
 4213 Greencastle
 Raleigh, NC

Living Area
 1080 sf/unit



NOTICE OF AWARD

Date of Issuance:

Owner: City of Raleigh

Owner's Project No.:

Engineer:

Engineer's Project No.:

Project:

Contract Name:

Bidder:

Bidder's Address:

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

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

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

Drawings will be delivered separately from the other Contract Documents.

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

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

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

Within **[90]** days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: **City of Raleigh**

By (signature): _____

Name (printed): _____

Title: _____

Copy: Engineer

AGREEMENT

INSTRUCTIONS TO CONTRACTORS AND REQUIREMENTS AS TO FORM FOR CITY OF RALEIGH, NC AGREEMENTS

DO NOT REMOVE FROM AGREEMENT

Please observe the following in executing the attached Contract:

1. The Owner may enter into an Agreement with three types of legal entities.
 - (a) If the Agreement is with an individual, that individual should sign the Agreement exactly as his name is set out. If the Agreement is with an individually-owned business, the Agreement should be with the individual owner, and not the named business.
 - (b) Execution on behalf of a corporation should be by an authorized corporate officer, with a second corporate officer signing to attest, with the corporate seal affixed. An official other than a corporate officer should attach documentation of their authority to execute and bind the company.
 - (c) If the Agreement is with a partnership, a general partner may execute unless an authorized partner is designated to execute. Documentation of such authorization should be attached.
2. After signing the Agreement, the appropriate notary's acknowledgement, either in the corporate form or individual/partnership form should be completed.
3. The Performance and Payment Bonds should be attached to the Agreement package. They should be signed by the Agree mentor, and his signature should be acknowledged with the appropriate acknowledge form. Next, the Bonds, in approved form, must be signed by the authorized agent of the Surety Company issuing the Bonds, and an executed Power of Attorney document authorizing the agent to sign must accompany the Bond Documents.
4. The Agreement should not be dated, except by the last person executing the Agreement, normally the City Clerk.
5. The Bid Form and all other documents submitted with the Bid shall be included with the Agreement and as noted in Article 9.
6. Page 00510 -1: Complete the Acceptance of Notice section on this page.
7. Pages 00520-3 through 00520-13: Complete in entirety.
8. Section 00610, 00615, 00617, and 00618: Complete in entirety.

9. Section 00618: Certificate of Insurance, Article 5 of the General and Supplementary Conditions requires the Certificate of Insurance to have those named as Additional Insured in each policy issued.
10. Most Certificates of Insurance state under the cancellation clause that "the issuing company will endeavor to mail 30 days written notice to the ..." and "but failure to mail such notice shall impose no obligation or liability of any kind upon the Company, its agents or representatives. Direct Notice of Cancellation endorsement is to be attached to corresponding Certificates of Insurance. With regard to expiration, cancellation, reduction, restriction, or any other change, certificates shall state:

"Should any of the following described policies be canceled before expiration date or be due to expire within thirty (30) days, the insurer shall mail thirty (30) days prior written notice to named certificate holder."
11. Four copies of the Contract are sent to the Contractor. The original and duplicates should be signed and returned to the Owner for signature, after which two duplicates will be returned to the Contractor. One copy may be retained by the Contractor and the other is for the use of the Bonding Company(s).
12. Failure to fully complete all four sets of the Contract Documents will cause delays in the approval by the Owner and therefore delay the issuance of the Notice to Proceed.

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT
CITY CONTRACT NO. [enter number]
CITY PURCHASE ORDER NO. [enter number]**

THIS AGREEMENT is by and between The City of Raleigh (Owner) and [Contractor's Name] (Contractor).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

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

[briefly describe significant aspects of the project – similar to 00100. Include add alternates selected in the bidding/award process]

ARTICLE 2 – THE PROJECT

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: [Complete name of project]

ARTICLE 3 – ENGINEER

The Project has been designed by [Engineering Consultant Name] (Engineer), which is 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. The Owner may assign a Job Site Observer.

The Project has been designed by [Engineering Consultant Name]. However [Third Party Engineering Consultant Name] shall act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. The Owner may assign a City field staff.

The Project has been designed by [Engineering Consultant Name]. However, the Owner shall act as the Engineer and Resident Project 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.

The Project has been designed by the Owner which is to act as the Engineer and Resident Project 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.

The Project has been designed by the Owner. However [Engineering Consultant Name] shall act as the 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. The Owner may assign a City field staff.

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 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed within [Contract time to SC] 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 [Total contract time] 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 loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. 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 \$[LD amount beyond SC time] for each day that expires after the time specified in Paragraph 4.02 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 or any proper extension thereof granted by Owner, Contractor shall pay Owner \$[LD amount after Final Completion time] for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.

- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.04 *Milestone Dates*

- A. The following principal events shall be completed and ready for final payment in accordance with paragraph 15.06 of the General Conditions within days indicated below after the date when the Contract Time commences to run. In accordance with paragraph 4.03 above as liquidated damages for delay (but not as penalty) Contractor shall pay

Owner the amounts indicated below for each day that expires after the time specified below for completion and readiness for final payment.

Milestone Event	Consecutive Calendar Days	Liquidated Damages
A.		
B.		
C.		

ARTICLE 5 – CONTRACT PRICE

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

The Contract Price shall not exceed the Total Contract amount of insert written out Contract Price here Dollars [\$insert Contract Price in numerical form here] unless changed by a duly authorized amendment or change order.

A. For all Work other than Unit Price Work, a lump sum of _____ Dollars (\$ _____)

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

B. For the Lump Sum for the following work items:

A. \$ _____

B. \$ _____

The Total Contract for the Lump Sum Price of: \$ _____

C. For the following Alternates as selected by the Owner for inclusion in the Project as follows:

A. \$ _____

B. \$ _____

C. \$ _____

- D. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

UNIT PRICE WORK

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
	SEE SECTION 00410				
Total of all Bid Prices (Unit Price Work)					\$ XXX.XX

The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement 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 as provided in Paragraph 10.05 of the General Conditions.

- E. 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 [25th] day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.05 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Final Completion, progress payments will be made in an amount equal to the percentage indicated in the Supplemental Conditions but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 15.01 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 Once a Progress or Final Payment Application has been submitted by the contractor, recommended by the Engineer, and Approved by the Owner, if payment is not made, the Contractor will be due interest beginning on the 46th day following Owner acceptance at a rate of 1% per month or fraction thereof in accordance with NC General Statute 143-134.1(a).

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 *In order to induce Owner to enter into this Agreement, Contractor makes the following representations:*

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-5.03 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-5.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (pages 00520-1 to 00520-_____, inclusive).
 2. Performance bond (pages 00610-1 to 00610-_____, inclusive).
 3. Payment bond (pages 00615-1 to 00615-_____, inclusive).
 4. Affidavit (page 00617)
 5. Certificate of Insurance (pages 00618-1 to 00618-_____, inclusive).
 6. General Conditions (pages 00700-1 to 00700-_____, inclusive).
 7. Supplementary Conditions (pages 00800-1 to 00800-_____, inclusive).
 8. Specifications as listed in the table of contents (pages 00010-1 to 00010-_____) of the Project Manual.
 9. Drawings consisting of [number of drawing sheets] sheets with each sheet bearing the following general title: [Project sheet title].
 10. Addenda as follows: [1 through xx or N/A]
 11. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (Sections 00410 and 00430).
 - b. Documentation submitted by Contractor prior to Notice of Award (City of Raleigh Bid Documentation; Sections 00440, 00441, 00442, 00443, and 00444).
 - c. Notice of Award (Section 00510).
 12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (Section 00550).
 - b. Work Change Directives (Section 00940).
 - c. Change Orders (Section 00941).
 - d. Field Orders (Section 00942).
 - e. Warranty Bonds, if any.
- B. The documents listed in Paragraph 9.01.A are part of this Agreement, and if not physically attached, are incorporated fully to this Agreement by reference (**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 Contract.

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

10.03 Successors and Assigns

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

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 *Right to Audit Clause*

- A. Contractor's, subcontractors' and sub-subcontractors' "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by a City's representative or an outside representative engaged by City. The City or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of three years after final payment or longer if required by law. City's representatives may (without limitation) conduct verifications such as counting employees at the Construction Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, subcontractors, and vendors.
- B. Such records shall include (hard copy, as well as computer readable data if it can be made available): written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; Change Order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger information detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the City in its sole discretion in connection with the Contractor's dealings with the City, including but not limited to:
 1. Compliance with Contract requirements for deliverables;
 2. Compliance with Construction Documents;
 3. Compliance with City's business ethics expectations;
 4. Compliance with Contract provisions regarding the pricing of Change Orders;
 5. Accuracy of Contractor representations regarding the pricing of invoices; or
 6. Accuracy of Contractor representations related to claims submitted by the Contractor or any of its payees.
- C. Contractor shall require all payees (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Contractor and payee. Contractor will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this Contract.

- D. City's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
- E. If an audit, inspection or examination in accordance with this article, discloses overpricing or overcharges (of any nature) by the Contractor to the City in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the City's audit shall be reimbursed to the City by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Contractor.
- F. The Contractor agrees to maintain all information pertaining to billing for services performed under this Contract in accordance with state law for public records. The Contractor shall afford the City access to these records for audit at such intervals as may be desired by the City. The Contractor shall also preserve the records for a period of three (3) years after Final Payment (or, alternatively, for a period of three years after termination of this Contract), or longer if required by law, during which time the City shall have access for audit purposes.
- G. The rights established under this section shall survive the expiration or termination of this Contract, and shall not be deleted, circumvented, limited, confined, or restricted by contract or any other section, clause, addendum, attachment or subsequent amendment to this Contract or any of the other Contract Documents.

10.07 *Iran Divestment Act Certification*

- A. Contractor certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 147-86.55, et seq. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147-86.59, Contractor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

10.08 *E – Verify*

- A. Contractor shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of Contractor's knowledge, any subcontractor employed by Contractor as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

10.09 *Companies Boycotting Israel Divestment Act Certification*

- A. Contractor certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81.

10.10 *Applicability of North Carolina Public Records Law*

- A. Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to the City by the Contractor are subject to the public records laws of the State of North Carolina and it is the responsibility of the Contractor to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the City. Contractor understands and agrees that the City may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Contract. To the extent that any other provisions of this Contract conflict with this paragraph, the provisions of this section shall control.

10.11 *Non-Discrimination*

- A. To the extent permitted by North Carolina law, the Parties for themselves, their agents, officials, directors, officers, members, representatives, employees, and contractors agree not to discriminate in any manner or in any form based on actual or perceived age, mental or physical disability, sex, religion, creed, race, color, sexual orientation, gender identity or expression, familial or marital status, economic status, veteran status or national origin in connection with this Contract or its performance.
- B. The Parties agree to conform with the provisions and intent of Raleigh City Code §4-1004 in all matters related to this Contract. This provision is incorporated into the Contract for the benefit of the City of Raleigh and its residents and may be enforced by an action for specific performance, injunctive relief, or any other remedy available at law or equity. This section shall be binding on the successors and assigns of all parties with reference to the subject matter of the Contract.

THIS SPACE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement by digital signature, under seal, on the respective dates below. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf. This Agreement shall be effective upon the date of the City's signature ("Effective Date").

OWNER:

CONTRACTOR:

CITY OF RALEIGH

****Name of Contractor****

a North Carolina municipal corporation

By: _____

By: _____

Name: _____

Name: _____

Title: Choose an item.

Title: _____

Date: _____

Date: _____

Attest: _____

Attest: _____

Title: **City Clerk (or designee)**

Title: _____

Address for giving notices:

Address for giving notices:

City of Raleigh

222 W. Hargett Street

Raleigh, North Carolina 27601

License No.: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Chief Financial Officer (or designee)

NOTICE TO PROCEED

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

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

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

In accordance with the Agreement: **[Insert number of days and dates.]**

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

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

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

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

PERFORMANCE BOND

<p>Contractor Name: [Full formal name of Contractor] Address (as registered with Secretary of State, if applicable): [Address of Contractor]</p>	<p>Surety Name: [Full formal name of Surety] Address (as registered with Secretary of State, if applicable): [Address of Surety]</p>
<p>Owner Name: City of Raleigh Mailing address: 222 W. Hargett Street Raleigh, NC 27601</p>	<p>Contract Description (name and location): [Owner's project/contract name, and location of the project] Contract Price: [Amount from Contract] Effective Date of Contract: [Date from Contract]</p>
<p>Bond Bond Amount: [Amount] Date of Bond: [Date] <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16</p>	
<p>Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.</p>	
Contractor as Principal	Surety
_____ <i>(Full formal name of Contractor)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i></p>	

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 **satisfactorily** 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 will 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 may 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 will 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 does 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 does 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 will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will 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 will not be reduced or set off on account of any such unrelated obligations. No right of action will 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 must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must 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 will be applicable.
- 12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
- 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 will be deemed deleted therefrom and provisions conforming to such

statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

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 will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows: **None**

PAYMENT BOND

Contractor Name: [Full formal name of Contractor] Address <i>(as registered w/ Secretary of State, if applicable)</i> : [Address of Contractor]	Surety Name: [Full formal name of Surety] Address <i>(as registered w/ Secretary of State, if applicable)</i> : [Address of Surety]
Owner Name: City of Raleigh Mailing address: 222 W. Hargett Street Raleigh, NC 27601	Contract Description <i>(name and location)</i> : [Owner's project/contract name, and location of the project] Contract Price: [Amount, from Contract] Effective Date of Contract: [Date, from Contract]
Bond Bond Amount: [Amount] Date of Bond: [Date] <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 18	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

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

shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
 - 16.1. *Claim*—A written statement by the Claimant including at a minimum:
 - 16.1.1. The name of the Claimant;
 - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;

- 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 - 16.1.4. A brief description of the labor, materials, or equipment furnished;
 - 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 16.1.7. The total amount of previous payments received by the Claimant; and
 - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of “labor, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
18. Modifications to this Bond are as follows: **None**

AFFIDAVIT

(To be attached to all Contracts)

STATE OF _____)
) SS
COUNTY OF _____)

_____ being first duly sworn on oath deposes and says that (s)he is _____

(attorney-in-fact or agent) of _____
(bonding company) surety on the attached Contract on _____
_____ executed by _____ (Contractor).

Affiant further deposes and says that no officer, official, or employee of the Owner has any direct or indirect interest, or is receiving any premium, commission, fee, or other thing of value on account of the same or the furnishing of the Bond, undertaking, contract of indemnity, guaranty, or suretyship in connection with the above-mentioned contract.

Signed _____

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

(Notary Public, _____ County, _____)

My Commission Expires _____.

PAGE FOR ATTACHING

CERTIFICATE OF INSURANCE

Contractor's Application for Payment

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

Application No.: _____ **Application Date:** _____

Application Period: From _____ to _____

1. Original Contract Price	\$	-
2. Net change by Change Orders	\$	-
3. Current Contract Price (Line 1 + Line 2)	\$	-
4. Total Work completed and materials stored to date (Sum of Column G Lump Sum Total and Column J Unit Price Total)	\$	-
5. Retainage		
a. _____ X \$ _____ - Work Completed	\$	-
b. _____ X \$ _____ - Stored Materials	\$	-
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, including retainage (Line 3 - Line 4)	\$	-

Contractor's Certification

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: _____ **Date:** _____

Recommended by Engineer	Approved by Owner
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____
Approved by Funding Agency	
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner: **City of Raleigh**
Engineer:
Contractor:
Project:
Contract Name:

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

This Preliminary Final Certificate of Substantial Completion applies to:

All Work The following specified portions of the Work:

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

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

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

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

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

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

Amendments to Owner's Responsibilities: None As follows:

[List amendments to Owner's Responsibilities]

Amendments to Contractor's Responsibilities: None As follows:

[List amendments to Contractor's Responsibilities]

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

[List attachments such as punch list; other documents]

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

Engineer

By *(signature)*: _____
Name *(printed)*: _____
Title: _____

PAGE FOR ATTACHING

POWER OF ATTORNEY

*Note: If the recorded POA from the Register of Deeds
is attached, page 00634-2 is not necessary.*

STATE OF NORTH CAROLINA
COUNTY OF _____

This is to certify that on the _____ day of _____, 20__, before me personally appeared before me to the undersigned Notary Public, _____ who, being first duly sworn, acknowledged the due execution of the foregoing instrument for the purpose therein stated.

Witness my hand and notarial seal this the _____ day of _____, 20

(SEAL)

Notary Public

My Commission Expires:

STATE OF NORTH CAROLINA
COUNTY OF _____

This is to certify that on the _____ day of _____, 20__, before me personally came _____, with whom I am personally acquainted, who, being by me duly sworn, says that (s)he is the President and _____ is the Secretary of _____, Incorporated, the corporation described in and which executed the foregoing instrument; that (s)he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said Secretary and the said corporate seal was affixed, all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

Witness my hand and notarial seal this the _____ day of _____, 20

(SEAL)

Notary Public

My Commission Expires:

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public duly commissioned and qualified to act in _____ County, State of _____, do hereby certify that _____, Attorney-in Fact for _____, a corporation, personally appeared before me this day, and being by me duly sworn, says that (s)he executed the foregoing and attached Payment and Performance Bonds, dated _____, 20__, for and in behalf of _____ as Surety and that his authority to execute and acknowledge said Bonds is contained in an instrument duly executed, acknowledged, and recorded in the Office of Register of Deeds of _____ County, State of _____, on the _____ day of _____, 20__, being recorded in Book Number _____, Page _____, of said Registry, and that the foregoing and attached Bonds were executed under and by virtue of the authority given by said instrument granting (him) (her) the said _____, Power of Attorney; and that the said _____, Attorney-in-Fact, acknowledged the due execution of the foregoing and annexed Bonds for the purpose therein expressed for and in behalf of said _____.

Witness my hand and notarial seal this the _____ day of _____, 20__.

(SEAL)

Notary Public

My Commission Expires:

00700
STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

- requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
 21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

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

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

ARTICLE 2—PRELIMINARY MATTERS

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

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

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

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

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

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

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

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

3.02 *Reference Standards*

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

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

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

B. *Resolving Discrepancies*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

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

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.

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

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

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

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

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

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

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

5.03 *Subsurface and Physical Conditions*

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

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

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

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

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

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

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
- a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;

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

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

- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

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

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

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

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

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

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

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

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 Contractor's Insurance

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
 - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

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

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

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

6.06 *Receipt and Application of Property Insurance Proceeds*

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

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

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

7.02 *Supervision and Superintendence*

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

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

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

7.04 *Services, Materials, and Equipment*

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

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria:* Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

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

7.09 *Permits*

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

7.10 *Taxes*

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

7.11 *Laws and Regulations*

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

7.12 *Record Documents*

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

7.13 *Safety and Protection*

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

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

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

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

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

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

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

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

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

7.18 *Indemnification*

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

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

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

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

8.02 *Coordination*

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

8.03 *Legal Relationships*

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

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

- 9.05 *Lands and Easements; Reports, Tests, and Drawings*
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
 - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
 - C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 *Insurance*
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 *Change Orders*
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 *Inspections, Tests, and Approvals*
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 *Limitations on Owner's Responsibilities*
- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 9.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.
- 9.11 *Evidence of Financial Arrangements*
- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).
- 9.12 *Safety Programs*
- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
 - B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

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

10.03 *Resident Project Representative*

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

10.04 *Engineer's Authority*

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

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

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

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

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

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

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

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

10.08 *Compliance with Safety Program*

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

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

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

11.02 *Change Orders*

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

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

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

11.04 *Field Orders*

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

11.05 *Owner-Authorized Changes in the Work*

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

11.06 *Unauthorized Changes in the Work*

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

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

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

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

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

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

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS

12.01 *Claims*

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

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

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

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

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
 5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

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

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

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

D. *Contractor's Fee*

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

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

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

13.02 Allowances

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

13.03 Unit Price Work

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

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

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

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

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

14.03 *Defective Work*

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

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

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

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

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

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

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

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

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

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

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

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

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

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

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

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

16.04 *Contractor May Stop Work or Terminate*

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

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

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

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

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

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

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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

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

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

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

SC-1.01.A.3. Add the following language to the end of Paragraph 1.01.A.3:

The Application for Payment form to be used on this Project is per City of Raleigh standards. Standard form to be used as a summary and signature sheet is included in Section 00620. Contractor shall use the City’s standard computerized forms, as included in these Contract Documents, for providing detail payment breakdown as an attachment to summary sheet. Contractor shall also include as part of the Application for Payment the “Certificate of the Contractor or His Duly Authorized Representative”.

SC-1.01.A.8. Add the following language to the end of Paragraph 1.01.A.8:

The Change Order form to be used on this Project is the City of Raleigh standard. The Standard Form to be used is included in these Contract Documents.

SC-1.01.A.9. Add the following language to the end of Paragraph 1.01.A.9:

The Change Proposal form to be used on this Project is the City of Raleigh standard. The Standard Form to be used is included in these Contract Documents.

SC-1.01.A.42. Amend the first sentence of Paragraph 1.01.A.42 to read as follows:

The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer and Owner, 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.

SC-1.01.A.51. Add the following definitions after Paragraph 1.01.A.50:

A.51 *City* – City of Raleigh.

A.52 *Minority Business* - A business:

- a. In which at least fifty-one percent (51%) is owned by one or more minority persons or socially and economically disadvantaged individuals, or in the case of a corporation,

in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and

- b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.

A.53 *Minority Person* - A person who is a citizen or lawful permanent resident of the United States and who is:

- a. Black, that is, a person having origins in any of the black racial groups in Africa;
- b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
- c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands;
- d. American Indian, that is, a person having origins in any of the original Indian peoples of North America; or
- e. Female.

A.54 *Notice of Violation* - A written notification from a governmental agency that the Owner has violated a law or regulation that the agency has jurisdiction over. Notice will take the form used by the agency and may outline action to be taken by the Owner to correct the violation and may include a monetary fine.

A.55 *Small Tools* - Tools and equipment with an individual cost of less than \$1,000.

A.56 *Socially and Economically Disadvantaged Individual* - Same as defined in 15 U.S.C. 637; "Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities". "Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged."

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance

SC-2.01.A Amend the first sentence of Paragraph 2.01.A by striking out the following words:

"(if the Contract requires Contractor to furnish such bonds)."

2.02 *Copies of Documents*

SC-2.02.A Delete the word "four" and insert "five" in its place in Paragraph 2.02.A.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, REQUIREMENTS , REUSE

3.01 *Intent*

SC-3.01 Add the following new paragraphs immediately after Paragraph 3.01.G:

- H. The Contract Drawings may be supplemented from time to time with additional Drawings by the Engineer as may be required to illustrate the Work or, as the Work progresses, with additional Drawings, by the Contractor, subject to the approval of the Engineer. Supplementary Drawings, when issued by the Engineer or by the Contractor, after approval by the Engineer, shall be furnished in sufficient quantity to all those who, in the opinion of the Engineer, are affected by such Drawings.

ARTICLE 4 - COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

SC-4.01.A Delete Paragraph 4.01.A in its entirety and insert the following in its place:

The Contract Times will commence to run on the day indicated in the Notice to Proceed; but in no event will the Contract Time commence to run later than the thirtieth day after the effective date of the Agreement. By mutual consent of the parties to the Contract, these time limits may be changed.

4.05 *Delays in Contractor's Progress*

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

5. *Weather-Related Delays*

- a. If "abnormal weather conditions" as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions adversely affected an activity on the critical path to completion of the Work, as of the time of the weather condition.
- b. The existence of abnormal weather conditions will be determined on a month-by-month basis in accordance with the following.
 - 1) Bad Weather Day: a workday where weather conditions adversely affect the Work and the impacted Work is on the critical path.
 - a) Determination of actual Bad Weather Days during performance of the Work will be based on weather at the Site. When Site weather data is not available, use nearest USGS weather station data.

- b) A workday after a daily rainfall amount greater than 1 inch will be considered an additional Bad Weather Day, subject to having an adverse effect on the Work as scheduled.
- 2) Foreseeable Bad Weather Days: determination of Foreseeable Bad Weather Days during performance of the Work will be based on the weather records measured and recorded by the National Oceanic & Atmospheric Administration, National Centers for Environmental Information (NOAA-NCEI) at the nearest weather monitoring station. For example, one source of weather records is from the NOAA-NCEI website: <https://www.ncdc.noaa.gov/cdo-web/datatools/normals>. From the website, click on the "View Station Report" link to find the Summary of Monthly Totals report.
- a) Contractor shall anticipate and factor into its bid and construction schedule the number of Foreseeable Bad Weather Days per month.
- 3) Abnormal Weather Conditions: is defined as the total Bad Weather Days in each month minus the Foreseeable Bad Weather Days.
- a) The existence of Abnormal Weather Conditions will not relieve Contractor of the obligation to demonstrate and document that delays caused by Abnormal Weather Conditions are specific to the planned work activities or that such activities thus delayed were on Contractor's then-current Progress Schedule's critical path for the Project.

SC-4.05 Add the following new paragraph immediately after Paragraph 4.05.G:

- H. Claims for additional Contract Time for delays beyond the Contractor's control shall be submitted within 30 days following the event(s) that caused the delay.

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

5.02 Use of Site and Other Areas

SC-5.02.A Delete Paragraph 5.02.A.2 in its entirety and insert the following in its place:

- 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 its Derivative Parties (as defined in SC-7.18.E.3), Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise and (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction. In addition, the Contractor's indemnity, defense and hold harmless obligations to the Indemnified Parties (as defined in SC-7.18.A) under SC-7.18 shall apply as to any and all Losses (as defined in SC-7.18.E.2),

liabilities, damages, expenses and costs arising out of, resulting from, or in connection with any and all claims or actions brought by any such owner or occupant against one or more of the Indemnified Parties when the Fault of the Contractor or its Derivative Parties is a proximate cause of the Losses, liabilities, damages, expenses and costs so indemnified. Provided, however, nothing herein shall require the Contractor to indemnify the Indemnified Parties against any Losses, liabilities, damages, expenses and costs arising out of, resulting from, or in connection with any negligent acts of one or more of the Indemnified Parties.

5.03 *Subsurface and Physical Conditions*

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

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

Report Title	Date of Report	Technical Data
		[Identify Technical Data]

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

Drawings Title	Date of Drawings	Technical Data
		[Identify Technical Data]

- G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents at [location] during regular business hours or may request copies from Engineer.

5.05 *Underground Facilities*

SC-5.05.A Add the following new subparagraphs immediately after Subparagraph 5.05.A.5:

- 6. following the North Carolina General Statutes, Chapter 87, Article 8 Underground Damage Prevention;
- 7. notifying owners of Underground Facilities prior to start of Work;
- 8. investigating ahead of the Work to verify the existence of Underground Facilities;

9. assuming risks and repairing damage caused by the Work to existing Underground Facilities whether indicated or not in the Contract Documents. Repairs to Underground Facilities shall be done to the satisfaction of the Underground Facility owner. Underground Facility owner reserves the right to repair damage by the Contractor to their Underground Facilities. If the owner exercises this right, the owner's cost of this Work shall be deducted from the money due the Contractor;
10. uncovering Underground Facilities, with that Owners approval, that are located within the Work as necessary for Engineer to determine the requirements for the change in the Work;
11. unforeseen Underground Facilities unless a design change is required; this includes Underground Facilities not shown on the Drawings/ Bidding Documents. The Engineer and the Owner assume no responsibility for the locations of Underground Facilities shown or not shown. There will be no compensation for "lost time" due to unforeseen utilities. If existing Underground Facilities require change(s) to the design, the Contractor shall provide a price to complete revised Work.

5.06 *Hazardous Environmental Conditions at Site*

SC-5.06.A Add the following new subparagraphs immediately after subparagraph 5.06.A.3:

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

Report Title	Date of Report	Technical Data
		[Identify Technical Data or note no Technical Data]

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

Drawings Title	Date of Drawings	Technical Data
		[Identify Technical Data or note no Technical Data]

SC-5.06.B Delete Paragraph 5.06.B in its entirety and insert the following:

- B. Not used.

SC-5.06.I In the first line, insert “North Carolina” between “by” and “Laws”.

SC-5.06.I Add the following language at the end of Paragraph 5.06.I:

The parties understand and acknowledge that no North Carolina case, statute, or Constitutional provision authorizes a local government to indemnify a Contractor and that this contract provision may be unenforceable.

SC-5.06.J Delete Paragraph 5.06.J in its entirety and insert the following in its place:

- J. Contractor’s indemnity, defense and hold harmless obligations to the Indemnified Parties under SC-7.18 shall apply as to any and all Losses, liabilities, damages, expenses and costs caused by, arising out of, resulting from, or in connection with the Contractor’s or its Derivative Parties’ failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or its Derivative Parties, or to a Hazardous Environmental Condition created by Contractor or its Derivate Parties when the Fault of the Contractor or its Derivative Parties is a proximate cause of the Losses, liabilities, damages, expenses and costs so indemnified. Provided, however, nothing herein shall require the Contractor to indemnify the Indemnified Parties against any such Losses, liabilities, damages, expenses and costs arising out of, resulting from, or in connection with any negligent acts of one or more of the Indemnified Parties.

ARTICLE 6 - BONDS AND INSURANCE

Article 6 Delete Article 6 in its entirety and insert the following in its place:

SC-6.01 *Performance and Payment Bonds*

- A. Concurrent with execution of the Contract and within fifteen (15) days of the Notice of Award, the successful Contractor shall procure, execute and deliver to the Owner and maintain, at Contractor’s own cost and expense, the following bonds, in the forms included (Sections 00610 and 00615), of a surety company approved by the State of North Carolina as a Surety:
- B. Performance Bond - in an amount not less than 100% of the total amount payable to the Contractor by the terms of the Contract as security for the faithful performance of the Work. Bond must be valid until one year after the date of issuance of the certificate of Substantial Completion.
- C. Payment Bond - in an amount not less than 100% of the total amount payable to the Contractor by the terms of the Contract as security for the payment of all persons performing labor and furnishing material in connection with the Work. Bond must be valid until one (1) year after date of issuance of the certificate of Substantial Completion.
- D. All bonds signed by an agent must be accompanied by a certified copy of the authority to act.

- E. If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business in the State of North Carolina is revoked, the Contractor shall within five (5) days thereafter substitute another.

SC-6.02 *Insurance Requirements*

- A. The Owner shall not be required under this Contract to procure or maintain any insurance for the Project or for the benefit of the Project participants.
- B. The Contractor shall ensure that it and all its Subcontractors shall procure and maintain insurance as required herein and as required by Laws and Regulations.
- C. All insurance required by the Contract to be purchased and maintained by Contractor shall be obtained from insurance companies that are duly licensed or authorized to do business in the state of North Carolina and to issue insurance policies for the required limits and coverages. Unless a different standard is authorized by the Owner in writing, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- D. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract.
- E. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- F. Owner, only if specified in this agreement, shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). None Required.
- G. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- H. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's sole option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's

liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

- I. Contractor shall require:
 1. Subcontractors to purchase and maintain workers' compensation, commercial general liability and other insurance coverages required by Contractor where appropriate and applicable for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability, automobile liability, and excess or umbrella insurance policy. Owner, Engineer and other additional insureds shall be covered under Subcontractors' commercial general liability and any umbrella insurance with respect to liabilities arising out of both ongoing and completed operations of Subcontractor(s). Such additional insured coverage shall be subject to the terms of ISO additional insured endorsement forms CG 20 10 (ongoing operations) and CG 20 37 (products-completed operations), or substitute form(s) providing equivalent coverage and utilizing 10/01 as the edition date of the ISO endorsements; and
 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project; and
 3. If the Scope of Work to be performed and/or the work site and surrounding area creates a special or high risk exposure to on-site individuals or the public, the Owner reserves the right to require the Contractor to ensure its Subcontractors, Suppliers, or categories of Subcontractor or Supplier, to provide specific insurance with policy limits as follows: **[Identify Subcontractors, Suppliers, or categories of same, and insert specific insurance requirements and policy limits, or enter "none"]**
- J. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- K. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the

indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, without at least 30 days prior written to Owner (10 days for cancellation due to non-payment of premium). Direct Notice of Cancellation endorsement is to be attached to corresponding certificates of insurance. In the event of any such cancellation, non-renewal or material limitation, the Contractor or subcontractor, as applicable, is obligated to replace such insurance within seven (7) days of any such cancellation, non-renewal or material limitation without a gap in coverage and file accordingly such notice with the Owner and other interested parties.
- O. The Work under this Contract shall not commence until the Contractor has verified to the Owner that all required insurance coverage as described herein, have been obtained and verifying Certificates of Insurance have been approved in writing by the Owner. The Owner's review and/or acceptance of certificates of insurance shall neither relieve Contractor of any requirement to provide the specific coverages set forth herein nor shall it constitute a waiver or acknowledgement of satisfaction of the specific insurance coverage requirements set forth in this Contract.
 - 1. The Description of Operations/Locations/Vehicles section in the certificates of insurance should include the City of Raleigh Department/Division, Name of Project or Services, Project Dates of contract.

The Certificate holder address should read:

City of Raleigh
Post Office Box 590
Raleigh, NC 27602-0590

SC-6.03 *Contractor's Insurance*

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

4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable;
 5. be primary and noncontributory, evidenced by ISO form CG 20 01 04 13 (Primary and Non-Contributory – Other Insurance condition) endorsement or its equivalent, with respect to the Owner's insurance or self-insurance to the extent of the Contractor's liability hereunder. Any other insurance or self-insurance maintained by the Owner shall be excess of, and non-contributory with the coverage afforded by Contractor's commercial general liability insurance and commercial umbrella insurance, if any;
 6. provide for reinstatement of full coverage after payment of any claim;
 7. state insurers have no right of recovery or subrogation against the Owner, its agents and agencies and shall have no recourse against them for the payment of any premiums or assessments under any form of policy; and
 8. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in this agreement;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary and noncontributory coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations); and
 4. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.
- D. *Other Additional Insureds:* If specified herein, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: **[Here list by legal name (not category, role, or classification) other persons or entities to be included as additional insureds or enter "none".]**
- E. *Workers' Compensation and Employer's Liability:* 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).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
North Carolina - State	Statutory
Employer's Liability	
Each accident	\$1,000,000
Each employee	\$1,000,000
Policy limit	\$1,000,000

- F. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
 2. damages insured by reasonably available personal injury and advertising liability coverage, and
 3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy must be written on an Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
 - a. Such insurance must be maintained for the period of the applicable statute of repose for any and all claims that may arise from operations of this Contract.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in herein or elsewhere in the Contract) certificates of insurance evidencing continuation of such insurance at final payment and for the period of the applicable statute of limitations and repose.

2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in this Contract in accordance with ISO policy form CG 00 01.
 - a. Premises/Operations liability
 - b. Underground fault, explosion, and collapse coverage
 - c. Independent Contractor's and Independent Subcontractor's coverage
 - d. Broad form property damage
 - e. Personal injury and advertising coverage
 - f. Cross Liability/Severability of Interest clause
 - g. Employer's Stop Gap Liability endorsement, if applicable
 - i. Amendment of the Pollution Exclusion Endorsement to allow coverage for bodily injury or property damage caused by heat, smoke, or fumes from a hostile fire
 - j. Designated General Aggregate Limit Endorsement, if required in Contract
 - k. Products completed operations including construction defect and contractual liability
 - l. Insurance coverage limits to be on a "per project" basis
 3. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
 4. For design professional additional insureds, ISO Endorsement CG 20 32 07 13 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- H. *Commercial General Liability—Excluded Content*: The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
 2. Any exclusion for water intrusion or water damage.
 3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.

4. Any exclusion of coverage relating to earth subsidence or movement.
5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).
6. Any limitation or exclusion based on the nature of Contractor's Work.
7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. *Commercial General Liability—Minimum Policy Limits*

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$5,000,000
Products—Completed Operations Aggregate	\$5,000,000
Bodily Injury and Property Damage—Each Occurrence	\$2,000,000
Personal and Advertising Injury	\$2,000,000

- J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle owned, hired or otherwise operated or used by or on behalf of the Contractor or any of its Derivative Parties and as used in the execution of the Work. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage) (Any/Owned, Hired, and Leased)	\$1,000,000

- K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies using a follows form coverage for all layers and coverage shall remain continuously in effect and without interruption from the date of commencement of construction until the end of the applicable statute of limitations and repose.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$2,000,000
General Aggregate	\$2,000,000

- L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies

alone, or through combinations of the primary insurance policy's policy limits and limits of an umbrella or excess liability policy.

M. *Contractor's Pollution Liability Insurance:* Contractor shall purchase and maintain a policy that must include Asbestos Legal Liability and Errors and Omissions due to potential environmental hazards.

1. Coverage shall apply to the scope of work described in this Contract including transportation and shall include coverage for bodily injury, property damage, including loss of use of damaged property, clean-up costs, mold, defense and investigative costs. Contractor shall maintain Completed Operations coverage for three (3) years following final acceptance of the project or termination of the Contract.
2. If the insurance policy is written on a claims-made basis, Contractor warrants that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) following final acceptance of the Work under the Contract is completed or termination of the Contract..
3. If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a retroactive date prior to the Contract effective date or start of work date the Contractor must purchase an extended period coverage for a minimum of five (5) years following final acceptance of the Work or termination of the Contract.. A copy of the claims reporting requirements must be submitted to Owner for review. Pollution Liability shall not contain lead-based paint or asbestos exclusions.

This insurance must be maintained for no less than three years after final completion.

Contractor's Pollution Liability	Policy limits of not less than:
Each Occurrence/Claim	\$3,000,000
General Aggregate	\$3,000,000

N. *Contractor's Professional Liability Insurance:* If Contractor will provide or furnish professional services under this *Contract*, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance to protect Owner from liability arising out of or resulting from the performance of professional services by Contractor or its Derivative Parties.

1. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable and shall contain full prior acts coverage.
2. Coverage shall not include any exclusions or limitations related to a) Scope of professional services; b) Delays in project completion or cost overruns; c) Who is authorized to notify the carrier of a claim or a potential claim; and d) Mold, fungus, asbestos, pollutants or hazardous substances.

3. The insurance must be maintained continuously throughout the duration of the Contract and through the applicable statute of limitations and repose.
4. Claims made coverage is permitted providing the retroactive date on the policy pre-dates the commencement of furnishing services on the Project.

Contractor's Professional Liability	Policy limits of not less than:
Each Claim	\$1,000,000
Annual Aggregate	\$3,000,000

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

[Policy limits commonly set by the railroad and purchasing insurance coverage directly from the railroad. Specific limits may be inserted here. The \$6 million limit below is the common limit requested in the Raleigh area.]

Railroad Protective Liability Insurance	Policy limits of not less than:
Each Claim	\$6,000,000
Aggregate	\$6,000,000

- P. *Unmanned Aerial Vehicle Liability Insurance:* If Contractor or its Subcontractors uses unmanned aerial vehicles (UAV—commonly *referred* to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified herein as additional insureds; and provide a certificate to Owner confirming Contractor's compliance with this requirement.

1. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy. The operator of the aircraft and their insurer(s) must hold the Owner and all additional insureds harmless and waive subrogation with respect to damage to the aircraft. If the aircraft is to be used to perform lifts at the Site, a "slung cargo" endorsement must be included to cover the full replacement value of any equipment being lifted.

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

- Q. *Other Required Insurance:* **[Here list additional types and amounts of insurance that Contractor is required to carry or enter "none".]**

SC-6.04 *Builder's Risk and Other Property Insurance*

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

Blasting and explosion, fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse of or structural injury to any structure due to the Contractor's operations; damage

to underground structures, pipes or conduits; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).

- a. The builder's all-risk coverage shall not contain an exclusion for resulting damage caused by faulty workmanship, design or materials.
 - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.
2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of Contractors, Engineers, and Architects).
 4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 5. extend to cover damage or loss to insured property while in transit.
 6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
 7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
 8. include performance/hot testing and start-up, if applicable.
 9. be maintained in effect until the Work is complete, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
 10. include as named insureds the Owner, Contractor, Subcontractors (of every tier), all lenders with security interests in the Site or the Project, and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of SC-6.04, SC-6.05, and SC-6.06 of this and all other corresponding Supplementary Conditions, the parties required to be insured will

be referred to collectively as “insureds.” In addition to Owner, Contractor, and Subcontractors of every tier, include as insureds the following:

- a. **[Here list by legal name (not category, role, or classification) other persons or entities to be included on the builder’s risk policy as named insureds. It is generally recommended to list the insured’s full legal/contractual name, address, contact person, telephone, and e-mail address. Include only persons or entities that have property at the Site that is to be insured by the builder’s risk insurance. If applicable, separately identify any mortgagee or lender required to be named as a loss payee or enter “none”.]**
11. if applicable, include, in addition to the Contract Price amount, the value of the following equipment and materials to be installed by the Contractor but furnished by the Owner or third parties:
 - a. **[Here list or provide cross-reference to specific items of Owner-furnished (or third-party furnished) equipment, and purchase value; do not list items whose value is already included in the Contract Price or enter “none”.]**

G. Installation Floater

[In the event Owner elects to allow purchase of an installation floater rather than a builder’s risk policy, insert the following. If not required, delete subparagraphs 1-4 and enter “1. Not required.”]

1. Contractor shall provide and maintain installation floater insurance on a broad form or “all risk” policy providing coverage for materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Work (“Covered Property”). Coverage under the Contractor’s installation floater will include loss from covered “all risk” causes (perils) to Covered Property:
 - a. of the Contractor, and Covered Property of others that is in Contractor’s care, custody, and control;
 - b. while in transit to the Site, including while at temporary storage sites;
 - c. while at the Site awaiting and during installation, erection, and testing;
 - d. continuing at least until the installation or erection of the Covered Property is completed, and the Work into which it is incorporated is accepted by Owner.
2. The installation floater coverage cannot be contingent on an external cause or risk, or limited to property for which the Contractor is legally liable.
3. The installation floater coverage will be in an amount sufficient to protect Contractor’s interest in the Covered Property. The Contractor will be solely responsible for any deductible carried under this coverage.

4. This policy will include a waiver of subrogation applicable to Owner, Contractor, Engineer, all Subcontractors, and the officers, directors, partners, employees, agents and other consultants and Subcontractors of any of them.
- H. *Builder's Risk and Other Property Insurance Deductibles:* The purchaser of any required builder's risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.
1. The builder's risk policy (or if applicable the installation floater) will be subject to a deductible amount of no more than **\$10,000** for direct physical loss in any one occurrence.

SC-6.05 *Property Losses; Subrogation/Waiver of Rights*

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

1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this SC-6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
 - D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

SC-6.06 Receipt and Application of Property Insurance Proceeds

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

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

7.02 *Supervision and Superintendence*

SC-7.02 Add the following new paragraph immediately after Paragraph 7.02.B:

C. Contractor's On-Site Supervision: For pipeline Contractors who have more than two construction crews performing work under one contract, a general superintendent shall be assigned to the Project Site to supervise all construction crews on site. The general superintendent shall be responsible for addressing any construction related issues from the Owner, the Engineer, and/or the Department of Transportation having jurisdiction.

7.03 *Labor; Working Hours*

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

D. Regular Working Hours: [8:00] am to [5:00] pm, Eastern Standard Time.

E. Overtime Work: If Contractor's Work requires inspection, as determined by the Owner, more than 10 hours in a work day or 40 hours in a work week, Monday through Friday excluding holidays, or on the weekends, Contractor shall submit a written request to the Owner five (5) working days prior to the scheduled Work. Contractor shall pay for the Resident Project Representative's time beyond the above hours at the rate of \$[] / hour.

F. Paragraph 7.03.C will not prevent the Contractor from working outside the regular working hours provided the work will not require the inspector to be present. Such work may include start up, clean up, seeding, painting (after the base surface has been approved by the inspector), and similar items. Contractor shall submit a written request to the Owner one (1) working day prior to the scheduled Work.

G. Contractor shall not be charged for RPR's time for Work specifically identified by the Contract Documents to be performed outside the above Work time or on weekends.

7.05 *"Or Equals"*

SC-7.05 Add the following new paragraph immediately after Paragraph 7.05.E:

F. Requirements for "or equals" shall be submitted prior to bidding. Reference Section 00100 (Advertisement for Bids) and Section 00200, Article 11 (Instructions to Bidders) for submission deadlines of requirements for "or equals".

7.07 *Concerning Subcontractors and Suppliers*

SC-7.07.C Add the following sentences to the end of Paragraph 7.07.C:

1. Bidder shall indicate subcontractors as required on the Bid Form.
2. Bidder shall indicate Minority Business Participation on the attachment to the Bid Forms. Low Bidder shall be required to submit the followings Affidavits as included in the City of Raleigh Business Assistance Program Guidelines:

- a. Affidavit C, Portion of the Work to be Performed by Minority Firms.
 - b. Affidavit D, Good Faith Efforts
3. Contractor whose Bid is accepted shall not substitute any person as Subcontractor in the place of the Subcontractor listed in the Bid, except:
- a. If the listed Subcontractor's bid is later determined by the Contractor to be non-responsible or non-responsive, or the listed Subcontractor refuses to enter into a contract for the complete performance of the bid work;
 - b. or with the approval of the City for good cause shown by the Contractor.

SC-7.07.K Delete Paragraph 7.07.K in its entirety and insert the following in its place:

- K. All work performed for Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and Subcontractor. The Subcontractor shall not commence work until the Contractor has obtained all insurance as required by Paragraphs 6.02 through 6.03 inclusive as amended by these Supplementary Conditions.

SC-7.07.N Add the following new paragraph immediately after Paragraph 7.07.M:

- N. Contractor shall not award work valued at more than [fifty (50%)] percent of the Contract Price to Subcontractor(s). Contractor shall perform at least [fifty (50%)] percent of the labor with own forces, unless prior written approval is provided by the Owner.

7.08 *Patent Fees and Royalties*

SC-7.08.B In the first line, insert "North Carolina" between "by" and "Laws".

SC-7.08.B Add the following language at the end of Paragraph 7.08.B:

The parties understand and acknowledge that no North Carolina case, statute, or Constitutional provision authorizes a local government to indemnify a Contractor and that this contract provision may be unenforceable.

SC-7.08.C Delete Paragraph 7.08.C in its entirety and insert the following in its place:

- C. Contractor's indemnity, defense and hold harmless obligations to the Indemnified Parties under SC-7.18 shall apply as to any and all Losses, liabilities, damages, expenses and costs caused by, arising out of, resulting from, or in connection with 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 when the Fault of the Contractor or its Derivative Parties is a proximate cause of the Losses, liabilities, damages, expenses and costs so indemnified. Provided, however, nothing herein shall require the Contractor to indemnify the Indemnified Parties against any such Losses, liabilities, damages, expenses and

costs arising out of, resulting from, or in connection with any negligent acts of one or more of the Indemnified Parties.

7.09 *Permits*

SC-7.09.A Amend the last sentence of Paragraph 7.09.A to read as follows:

Contractor shall pay all charges of utility owners for connections for providing permanent service to the Work.

SC-7.09.B Add the following new paragraphs after Paragraph 7.09.A:

- B. Owner obtained encroachment agreements and permits are included as part of the Contract Documents. The encroachment agreements and permits are attached as an appendix to the specifications or project manual. This Paragraph does not relieve Contractor of responsibility to comply with applicable Laws and Regulations as stated in Paragraph 7.11.
- C. Contractor shall be responsible for compliance with the terms of the encroachment agreements and permits issued by Federal/State/Local regulatory agencies. Compliance with the terms listed in the encroachment agreements and permits shall be at no additional cost to the Owner. This shall include generating and submitting any reports that may be required as a condition of the encroachment agreements and permits. All costs shall be included in the bid prices of applicable items.

7.10 *Taxes*

SC-7.10 Add the following new paragraphs after Paragraph 7.10.A:

- B. Procedures for reporting sales tax are included in Section 00805.

7.11 *Laws and Regulations*

SC-7.11.B Delete Paragraph 7.11.B in its entirety and insert the following in its place:

- B. If Contractor observes that the Specifications or Drawings are at variance with any Laws or Regulations, Contractor shall give Engineer prompt written notice thereof. If Contractor performs any Work knowing it to be contrary to such Laws or Regulations, and without such notice to Engineer, Contractor shall bear all costs arising therefrom. Contractor shall, at all times, observe and comply with and shall cause its Derivative Parties to observe and comply with all such existing Laws or Regulations. Further, Contractor's indemnity, defense and hold harmless obligations to the Indemnified Parties under SC-7.18 shall apply as to any and all Losses, liabilities, damages, expenses and costs caused by, arising out of, resulting from, or in connection with any claim, civil penalty, fine or liability arising from or based on the violation of any such Law or Regulations by the Contractor or its Derivative Parties.

SC-7.11 Add the following new paragraphs after Paragraph 7.11.C:

- D. Contractor shall be responsible for conforming to the requirements of the approved sedimentation control plan, the rules and regulations of the Erosion Control Laws of the State of North Carolina, specifically the Sedimentation Pollution Control Act of 1973 (G.S. 113A) as amended, and the local jurisdiction where the Project is located as it relates to land disturbing activities undertaken by Contractor. Contractor shall be responsible to Owner for any fines imposed on Owner as a result of Contractor's failure to comply with the above as it is further described in the Erosion Control Section of the Specifications.
- E. Contractor shall be responsible for conforming to the requirements of the NC Department of Transportation Encroachment Agreement, if attached to the Contract Documents.
- F. Should the Contractor cause the Owner to receive a Notice of Violation from a governmental agency, Contractor shall pay costs associated with Notice of Violation within ten (10) days of receipt of written notification. Costs shall include, but not be limited to:
 - 1. Fines imposed on the Owner by the agency.
 - 2. Required legal newspaper publications concerning violation.
 - 3. Required mailings to customers concerning notification of violation.
 - 4. Administrative and engineering costs associated with resolving the Notice of Violation.
- G. Notice of Violation may include, but not be limited to, the following problems:
 - 1. Sewage spill.
 - 2. Inadequate erosion control measures.
 - 3. Equipment failure during the warranty period.
- H. In the event of a sewage spill during construction, Contractor shall take the following steps as a minimum:
 - 1. Take immediate action to contain the spill.
 - 2. Notify the Owner and Engineer within 30 minutes of realizing a spill has occurred.
 - 3. Clean up the spill as directed by the Owner. Contractor shall bear all costs associated with the cleanup.

7.12 *Record Documents*

SC-7.12 Add the following new paragraph after Paragraph 7.12.A:

- B. Record Documents shall be updated daily. Should the Owner or Engineer determine that the Record Documents are not being properly maintained, approval of future payment requests shall be withheld.

7.13 *Safety and Protection*

SC-7.13.A Add the following new subparagraph after Paragraph 7.13.A:

- 1. When tasks (operating valves, lock out – tag out, etc.) must be accomplished by City staff to allow Contractor to perform or continue its Work, Contractor shall independently verify and confirm the performance of the tasks prior to performing the impacted Work.

SC-7.13.D Delete Paragraph 7.13.D its entirety and insert the following in its place:

- D. Contractor shall be responsible for remedying damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 as follows:
 - 1. To the fullest extent allowed by Laws and Regulations, Contractor shall remedy at its own expense any and all damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 arising out of, or resulting from the sole negligence of the Contractor, the Contractor's agents, the Contractor's employees, 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.
 - 2. In matters other than those covered by subsection SC-7.18.A, and to the fullest extent allowed by Laws and Regulations, Contractor shall remedy at its own expense any and all damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 arising out of, resulting from, or in connection with the execution of the Work provided for in this Contract when the Fault of the Contractor or its Derivative Parties is a proximate cause of such damage, injury, or loss. For the purposes of this section, the terms "Fault" and "Derivative Parties" shall have the same meaning as that set forth in SC-7.18.E.

7.16 *Submittals*

SC-7.16D.2 In the first sentence, replace "two" with "three".

SC-7.16 Add the following new paragraph immediately after Paragraph 7.16.F:

- G. All materials or equipment delivered to the Site shall be accompanied by certificates, signed by an authorized officer of the supplier, and notarized guaranteeing that the materials or equipment conform to specification requirements. Such certificates shall be immediately turned over to the Engineer. Materials or equipment delivered to the Site without such certificates will be subject to rejection.

7.18 *Indemnification*

SC-7.18 Delete Paragraphs 7.18.A and 7.18.B in their entirety and insert the following in their place:

- A. To the fullest extent allowed by Laws and Regulations, Contractor shall indemnify, defend, and hold harmless the Owner, its officers, officials, employees, agents, or indemnities (collectively called "Indemnified Parties") from and against those Losses, liabilities, damages, and costs proximately caused by, arising out of, or resulting from the sole negligence of the Contractor, the Contractor's agents, or the Contractor's employees.
- B. In matters other than those covered by subsection 7.18A, above, and to the fullest extent allowed by Laws and Regulations, Contractor shall indemnify, defend, and hold harmless the Indemnified Parties from and against those Losses, liabilities, damages, and costs caused by, arising out of, resulting from, or in connection with the execution of the Work provided for in this Contract when the Fault of the Contractor or its Derivative Parties is a proximate cause of the Loss, liability, damage, or expense indemnified.
- C. Costs and expenses shall include attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the Indemnified Parties to defend against third-party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of any of the Indemnified Parties by Laws and Regulations or by contract, only if the Fault of the Contractor or its Derivative Parties is a proximate cause of the attorney's fees, litigation or arbitration expenses, or court costs to be indemnified.
- D. The Contractor's duty to indemnify, defend, and hold harmless described hereinabove shall survive the termination or expiration of this Contract.
- E. Definitions:
 - 1. For the purposes of SC-7.18, the term "Fault" shall mean any breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violation of applicable statutes or regulations.
 - 2. For the purposes of SC-7.18, the term "Loss" or "Losses" shall include, but not be limited to, fines, penalties, and/or judgments issued or levied by any local, state, or federal governmental entity.
 - 3. For the purposes of SC-7.18, the term "Derivative Parties" shall mean any of the Contractor's Subcontractors, agents, employees, or other persons or entities for which the Contractor may be liable or responsible as a result of any statutory, tort, or contractual duty.

ARTICLE 8 - OTHER WORK AT THE SITE

8.01 *Other Work*

SC-8.01.E Amend the first sentence of Paragraph 8.01.E to read as follows:

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and within seven days 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.

SC-8.01 Add the following new paragraphs immediately after Paragraph 8.01.F.

- G. Prime contracts will be let in connection with the Project as outlined in Specification Section - Summary of Work.
- H. The Owner, Engineer, and Engineer's consultants shall not be liable to Contractor for any claims, costs, losses or damages incurred or sustained by Contractor on or in connection with any other project or anticipated project.

8.02 *Coordination*

SC-8.02 Add the following new Paragraph 8.02.C immediately after Paragraph 8.02.B:

- C. If Owner intends to contract with others for the performance of other work at or adjacent to the Site:
 - 1. [Here identify individual or entity] shall have authority and responsibility for coordination of the various contractors and work forces at the Site;
 - 2. The following specific matters are to be covered by such authority and responsibility: [Here itemize such matters];
 - 3. The extent of such authority and responsibilities is: [Here provide the extent].

8.03 *Legal Relationships*

SC-8.03 Delete Paragraph 8.03.C in its entirety and insert the following in its place:

- C. If Contractor or its Derivative Parties damage(s), delay(s), disrupt(s), or interfere(s) with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's or its Derivative Parties' failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's or its Derivative Parties' action(s), inaction(s), 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 or Owner, then Contractor shall 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 in a court of competent jurisdiction. In addition, the Contractor's indemnity, defense and hold harmless obligations to the Indemnified Parties under SC-7.18 shall apply as to any and all Losses, liabilities, damages, expenses and costs arising out of, resulting from, or in connection with any and all claims brought by any such other contractor or utility owner against one or more of the Indemnified Parties that arise out of or relate to any such damage, delay, disruption or interference when the Fault of the Contractor or its Derivative Parties is a proximate cause of the Losses, liabilities, damages, expenses and costs so indemnified. Provided, however, nothing herein shall require the Contractor to indemnify the Indemnified Parties against any such claims arising out of, resulting from, or in connection with any negligent acts of one or more of the Indemnified Parties.

ARTICLE 9 - OWNER'S RESPONSIBILITIES

9.11 *Evidence of Financial Arrangements*

SC-9.11 Add the following new paragraph immediately after Paragraph 9.11.A:

- B. On request of Contractor, prior to the execution of any Change Order involving a significant increase in the Contract Price, Owner shall furnish to Contractor reasonable evidence that adequate financial arrangements have been made by Owner to enable Owner to fulfill the increased financial obligations to be undertaken by Owner as a result of such Change Order.

ARTICLE 10 - ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

SC-10.01.A Delete Paragraph 10.01.A in its entirety and replace with the following:

- A. Engineer will be Owner's representative during the construction period and Engineer's instructions shall be followed promptly and efficiently.

10.03 *Resident Project Representative*

SC-10.03.A Add the following new subparagraphs immediately following Paragraph 10.03.A:

1. The Resident Project Representative (RPR) will serve as the Engineer's liaison with the Contractor, working principally through the Contractor's superintendent to assist the Contractor in understanding the intent of the Contract Documents.
2. The RPR shall conduct on-site observations of the Work in progress to confirm that the Work is proceeding in accordance with the Contract Documents. They will verify that tests, equipment and systems start-ups and operating and maintenance instructions are conducted as required by the

Contract Documents. They will have the authority to disapprove or reject defective Work in accordance with Article 14.

3. The RPR will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:
 - a. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
 - b. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
 - c. *Liaison*
 - i) Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
 - ii) Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - iii) Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.
 - d. *Review of Work; Defective Work*
 - i) Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.
 - ii) Observe whether any Work in place appears to be defective.
 - iii) Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.
 - e. *Inspections and Tests*
 - i) Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.

- ii) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.
 - f. *Payment Requests*: Review Applications for Payment with Contractor.
 - g. *Completion*
 - i) Participate in Engineer's visits regarding Substantial Completion.
 - ii) Assist in the preparation of a punch list of items to be completed or corrected.
 - iii) Participate in Engineer's visits to the Site in the company of Owner and Contractor regarding completion of the Work and assist in preparation of a final punch list of items to be completed or corrected by Contractor.
 - iv) Observe whether items on the final punch list have been completed or corrected.
- 4. Except upon written instructions of the Engineer, the RPR or Owner's field staff shall not have authority to:
 - a. Authorize any deviation from the Contract Documents or approve any substitute materials or equipment (including "or-equal" items).
 - b. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
 - c. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
 - d. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.
 - e. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 - f. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 - g. Authorize Owner to occupy the Project in whole or in part.
 - h. 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.

- i. Be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
 - j. 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.
5. Any decision made by RPR or Owner's field staff 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 RPR or Owner's field staff, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by RPR or Owner's field staff to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
 6. RPR's or Owner's field staff's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with, the Contract Documents.

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

1. When the Owner assigns City field staff to monitor the project, such staff's limitations shall be as described in SC-10.03.A.4, SC-10.03.A.5 and SC-10.03.A.6.

ARTICLE 11 - CHANGES TO THE CONTRACT

11.07 *Change of Contract Price*

SC-11.07.B.2 Delete this subparagraph in its entirety and replace with the following:

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (with allowances for overhead and profit in accordance with Paragraph 11.07.C.2); or"

11.08 *Change of Contract Times*

SC-11.08 Add the following paragraph after Paragraph 11.08.B:

- C. Time Extension: Contract time extensions for weather delays do not entitle Contractor to "extended overhead" recovery.

ARTICLE 12 - CLAIMS

No Supplementary Conditions in this Article.

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

13.01 *Cost of the Work*

SC-13.01.B.1 Delete Paragraph 13.01.B.1 in its entirety and replace with the following:

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, vacation and holiday pay applicable thereto. Labor will be based on direct labor cost, Contractor to provide certified payroll upon request. No claims for extra cost shall be considered based on an escalation of labor costs throughout the period of the Contract.

SC-13.01.B.2 Add the following language at the end of the Paragraph:

No claims for extra cost shall be considered based on an escalation of material costs throughout the period of the Contract.

SC-13.01.B.3 Delete the second sentence "If required...be acceptable."

SC-13.01.B.4 Delete in its entirety.

SC-13.01.B.5.a Delete Paragraph in its entirety.

SC-13.01.B.5.c Delete Paragraph 13.01.B.5.c in its entirety and insert the following in its place:

c. Construction Equipment and Machinery:

1. Rentals of all construction equipment and machinery, and the parts thereof 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.
2. Full rental cost for rented, leased, and/or owned equipment shall not exceed rates listed in the current version of Rental Rate Blue Book for Construction Equipment (Blue Book) or AED Green Book: Rental Rates & Specifications for Construction Equipment (Green Book). If rental rates for the equipment

being used for the Work are not listed in the [Blue/Green] Book, the Contractor will receive the prevailing rental rates being paid for such equipment in the area where the Project is located. Computed durations will be based upon the Work completed. Computed rates will include all operating costs; costs will include the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work. Equipment or machinery with a value of less than \$1,000 will be considered small tools. The Engineer/ Owner reserves the right to request four rental quotes as backup.

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

<u>Usage</u>	<u>[Blue/Green] Book Payment Category</u>
Less than 8 hours	Hourly Rate
8 or more hours but less than 4 days	Daily Rate
4 or more days but less than 16 days	Weekly Rate
16 or more days	Monthly Rate

SC-13.01.B.5.d Add the following language at the end of the Paragraph:

However, reimbursable sales and use taxes paid to the State of North Carolina or to local governments in North Carolina shall be included or excluded from the Cost of the Work as described in Section 00805.

SC-13.01.B.5.f Delete Paragraph in its entirety.

SC-13.01.B.5.g Delete Paragraph in its entirety.

SC-13.01.B.5.h Delete Paragraph in its entirety.

SC-13.01.C.1 Add the following language at the end of the Paragraph.

Project Management will not be included in the Cost of the Work.

13.03 *Unit Price Work*

SC-13.03.E.1.a Delete Paragraph 13.03.E.1.a in its entirety and insert the following in its place:

- a. The extended Bid price of a particular item of Unit Price Work (excluding rock excavation and undercut) amounts to five (5) percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than twenty-five (25) percent from the estimated

quantity of such item indicated in the Agreement at the time of Contract formation;
and

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

14.02 *Tests, Inspections, and Approvals*

SC-14.02.B Delete Paragraph 14.02.B in its entirety and insert the following in its place:

- B. Owner shall employ and pay for inspections and testing services specifically noted as such in the Contract. All others required shall be the responsibility of the Contractor.

SC-14.02.C Delete Paragraph 14.02.C in its entirety and insert the following in its place:

- C. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be specifically inspected, tested, or approved by some public body, Contractor shall assume full responsibility therefore, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection, testing or approval.

SC-14.02.G Add the following paragraph(s) immediately following Paragraph 14.02.F:

- G. Owner reserves the right to independently perform at its own expense, laboratory tests on random samples of material or performance tests on equipment delivered to the Site. These tests if made will be conducted in accordance with the appropriate referenced standards or Specification requirements. The entire shipment represented by a given sample, samples or piece of equipment may be rejected on the basis of the failure of samples or pieces of equipment to meet specified test requirements. All rejected materials or equipment shall be removed from the Site, whether stored or installed in the Work, and the required replacement shall be made, all at no additional cost to the Owner.

14.03 *Defective Work*

SC-14.03.G Add a new paragraph after Paragraph 14.03.F:

- G. At any time during the progress of the Work and up to the date of final acceptance, the Engineer shall have the right to reject any Work which does not conform to the requirements of the Contract Documents, even though such Work has been previously inspected and paid for. Any omissions or failure on the part of the Engineer to disapprove or reject any Work or materials at the time of inspection shall not be construed as an acceptance of any defective Work or materials.

14.06 *Owner May Stop the Work*

SC-14.06.A Add the following language to the first sentence of Paragraph 14.06.A after:

".....will conform to the Contract Documents," add "or if the Work interferes with the operation of the existing facility", and then continue "then Owner may order..."

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

15.01 *Progress Payments*

SC-15.01.A Add the following paragraph immediately following Paragraph 15.01.A:

1. The Contractor shall submit for the Engineer's approval, a complete breakdown of all Lump Sum Items in the Bid. This breakdown, modified as directed by the Engineer, will be used as a basis for preparing estimates and establishing progress payments.

SC-15.01.B.4 Delete Subparagraph 15.01.B.4 in its entirety and replace with the following:

4. Progress payment request shall include the percentage of the total amount of the Contract which has been completed from the start-up of the Project to and including the last day of the preceding month, or other mutually agreed upon day of the month accompanied by such data and supporting evidence as Owner or Engineer may require.

SC-15.01.B. Add the following new subparagraphs after Subparagraph 15.01.B.4:

5. Forms shall be prepared by the Contractor and submitted to the Engineer for approval. Forms to be used are included in Section 00620 and will be supplied by the Engineer.
6. At the option of the Owner, partial payment up to the estimated value, less retainage, may be allowed for any materials and equipment not incorporated in the Work, pursuant to the following conditions:
 - a. Major equipment items stored off site shall be stored in a bonded warehouse and properly maintained during storage.
 - b. Equipment or materials stored on the Site shall be properly stored, protected and maintained.
 - c. For any partial payment the Contractor shall submit, with the monthly progress payment from each material or equipment manufacturer, bills or invoices indicating actual material cost.
 - d. Contractor shall submit evidence that payment has been made for materials or equipment stored and for which the Engineer has authorized partial payment and previous progress payments, prior to submission of the next monthly payment request.

7. The Owner will retain five percent (5%) of the amount of each such estimate until Work covered by the Contract is 50% complete. When 50% of the Work of the original Contract has been completed and in the opinion of the Owner the Contractor continues to perform satisfactorily and nonconforming Work identified in writing prior to that time by the Engineer or Owner has been corrected by the Contractor and accepted by the Owner, the Owner with written consent of surety will adjust future partial payments so that two and one-half percent (2-1/2%) of the original Contract Price is retained.
8. The Project shall be deemed 50% complete when the Contractor's gross project invoices, excluding the value of materials stored off-site, equals or exceeds 50% of the original value of the Contract, except the value of materials stored on-site shall not exceed 20% of the Contractor's gross invoices for the purpose of determining whether the project is 50% complete.
9. If the Owner determines it is appropriate to reduce retainage, the method used for such adjustment shall be to fix retainage at two and one-half percent (2-1/2%) of the original Contract amount (when the Work is 50% complete) and to pay all subsequent Partial Payment Requests to the full approved amount. The intent of such an adjustment is to gradually reduce retainage to two and one-half percent (2-1/2%) of the original Contract amount when the Work is 100% complete. Following 50% completion of the Project, the Owner may also withhold additional retainage from any subsequent periodic payment, not to exceed five percent (5%), in order to allow the Owner to retain two and one-half percent (2-1/2%) total retainage through the completion of the Project.
10. If the Owner determines the Contractor's performance is unsatisfactory, the Owner may reinstate retainage for each subsequent periodic payment application up to a maximum amount of five (5) percent of the original Contract amount.
11. Within 60 days after the submission of a final pay application, the Owner with written consent of the surety shall release to the Contractor all retainage on payments held by the Owner if (1) the Owner receives a certificate of substantial completion from the Engineer, or (2) the Owner receives beneficial occupancy or use of the Project. However, the Owner may retain sufficient funds to secure completion of the Project or corrections on any Work. If the Owner retains funds, the amount retained shall not be more than 2.5 times the Engineer's estimated value of the Work to be completed or corrected. Any reduction in the amount of the retainage on payments shall be with the written consent of the Contractor's surety.
12. Retainer provisions contained in Contractor's subcontracts may not exceed the terms and conditions for retainage provided herein. Contractor is further required to satisfy the retainage provisions of N.C.G.S. 143-134.1(b2) with regard to subcontracts for early finishing trades (structural steel, piling, caisson, and demolition) and to coordinate the release of retainage for such trades from the retainage held by the Owner from the Contractor pursuant to statute.

13. Nothing shall prevent the Owner from withholding payment to the Contractor in addition to the amounts identified herein for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the Owner or reasonable evidence that a third-party claim will be filed.

SC-15.01.C.6 Add the following new subparagraphs after Subparagraph 15.01.C.6.e:

- f. Sedimentation and erosion control are determined to be unsatisfactory or unacceptable. A deduction of up to 10% of the payment amount for bid items that include sedimentation and erosion control installed during the payment period may be withheld in order to ensure remediation of the unsatisfactory or unacceptable work. Upon remediation, Contractor may receive payment for the deduction in subsequent Application for Payment.
- g. Seeding and mulching are determined to be unsatisfactory or unacceptable. A deduction of up to 20% of the payment amount for bid items that include seeding and mulching installed during the payment period may be withheld in order to ensure remediation of the unsatisfactory or unacceptable work. Upon remediation, Contractor may receive payment for the deduction in subsequent Application for Payment.
- h. Record Documents are not maintained satisfactorily and in accordance with the Contract Documents. Payment requests shall not be approved until the deficiencies are satisfactorily corrected.

SC-15.01.D.1 Delete Paragraph 15.01.D.1 in its entirety and insert the following in its place:

1. Upon receipt from Engineer of an Application for Payment bearing Engineer's recommendation of payment, Owner shall set off against the amount recommended by Engineer any sums to which Owner is entitled pursuant to Sec. 15.01.E of the General Conditions and shall then approve the Application for Payment. Owner shall tender the resulting balance due to Contractor within thirty (30) days of Owner's approval of the Application for Payment

15.03 *Substantial Completion*

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

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

15.06 *Final Payment*

SC-15.06.E Delete Paragraph 15.06.E in its entirety and insert the following in its place:

Final Payment Becomes Due: Upon receipt from Engineer of the final Application for Payment bearing Engineer's recommendation of payment, Engineer's notice of

acceptability, and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled pursuant to Sec. 15.01.E of the General Conditions, and shall then approve the final Application for Payment. Owner shall tender the resulting balance due to Contractor within thirty (30) days of Owner's approval of the final Application for Payment.

ARTICLE 16 - SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

SC-16.01 Add the following new paragraph immediately after Paragraph 16.01A:

- B. Should the Owner suspend Work due to unsafe Work conducted by the Contractor, the Contractor shall not be allowed any adjustment in Contract Price or extension of Contract Time attributed to this delay.

16.02 *Owner May Terminate for Cause*

SC-16.02.A.3 Add the following after "jurisdiction":

"(including those governing employee safety)"

SC-16.04.A Amend the first sentence of paragraph 16.04.A as follows:

Strike out the phrase "Owner fails for 30 days" and replace with "Owner fails for 45 days after Approval by Owner".

SC-16.04.B Amend the first sentence of paragraph 16.04.B as follows:

Strike out the phrase "Owner has failed for 30 days" and replace with "Owner has failed for 45 days after Approval by Owner".

ARTICLE 17 - FINAL RESOLUTION OF DISPUTES

SC-17.01.B Delete in its entirety and replace with the following:

- B. Either Owner or Contractor may request mediation of any claim submitted to Engineer for a decision under Article 12 - Claims before such decision becomes final and binding.

SC-17.01 Add the following new paragraphs after SC-17.01.B:

- C. In accordance with GS 143-128(f), any claim, dispute or other matter in question (involving greater than \$15,000) arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceeding by either party. The dispute resolution process adopted by the N.C. State Building Commission shall be followed. The process entitled "Rules

Implementing Mediated Settlement Conferences in North Carolina Construction Projects” are included in Section 00810.

- D. All matters relating to this Contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Contract shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

ARTICLE 18 - MISCELLANEOUS

18.01 *Giving Notice*

SC-18.01.A.3 Delete in its entirety and replace with the following:

- 3. by e-mail to the recipient, with the words “Formal Notice” in the e-mail’s subject line.

SC-18.01 Add the following new paragraph after Paragraph 18.01.A:

- B. No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract. Any notice by a party to this Contract to another party or parties to this Contract relative to any part of this Contract shall be in writing.

18.07 *Controlling Law*

SC-18.07.A Delete in its entirety and replace with the following:

- A. All matters relating to this Contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Contract shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

END OF SECTION

**PROCEDURE FOR REPORTING NORTH CAROLINA SALES TAX
EXPENDITURES ON CITY OF RALEIGH CONTRACTS**
(for projects with reimbursable sales tax excluded from Bid)

1. The following procedure in handling the North Carolina Sales Tax is applicable to this project. Contractors shall comply fully with the requirements outlined hereinafter, in order that the owner may recover the amount of the tax permitted under the law. For the purposes of this section, "Sales Taxes" shall mean sales and use taxes paid to the State of North Carolina or to local governments in North Carolina.
 - (a) Reimbursable Sales Taxes are to be excluded from the bid price for this project.
 - (b) The City is entitled to refunds from the State of North Carolina for these reimbursable sales taxes. The Contractor that performs work under this contract is allowed to obtain a reimbursement from the City for those Sales Taxes for which the State will grant a refund to the City. The City will reimburse the Contractor, and the City later obtains a refund from the State.
 - (c) It shall be the general contractor's responsibility to furnish the City documentary evidence showing the materials used and sales tax paid by the general contractor and each of his subcontractors. Any county sales tax included in the contractor's statements must be shown separately from the state sales tax. If more than one county is shown, each county shall be listed separately.
 - (d) The documentary evidence shall be the attached Reimbursable Sales and Use Tax Statement. This evidence shall consist of a certified statement, by the general contractor and each of his subcontractors individually, showing total purchases of materials from each separate vendor and total sales taxes by each county paid each vendor. The certified statement must show the invoice number (s) covered and inclusive dates of such invoices. State sales tax shall be listed separately from county sales tax. If more than one county is shown, each county shall be listed separately. The invoices shall be provided to substantiate the information on the statement.
 - (e) Materials used from general contractor's or subcontractor's warehouse stock shall be shown in a certified statement at warehouse stock prices.
 - (f) The general contractor shall not be required to certify the subcontractor's statements. However, the subcontractor may submit for reimbursement by certifying a Reimbursable Sales and Use Tax Statement, submitting it to the general contractor for the general contractor to submit with the pay application for the properties listed on that form. The City will make the reimbursement payable to the Contractor.
 - (g) The documentary evidence to be furnished to owners eligible for Reimbursable Sales Tax refunds covers sales and/or use taxes paid on building materials used by general contractors and subcontractors in the performance of contracts with churches,

orphanages, hospitals not for profit, educational institutions not operated for profit and other charitable or religious institutions or organizations not operated for profit and incorporated cities, towns and counties in this State. The documentary evidence is to be submitted to the above-named institutions, organizations and governmental units to be included in claims for refunds to be prepared and submitted by them to obtain refunds provided by G.S. 105-164.14 and is to include the purchase of building materials, supplies, fixtures and equipment which become a part of or annexed to buildings or structures being erected, altered or repaired under contracts with such institutions, organizations or governmental units.

- (h) The Contractor may seek reimbursement separately from, but at the same time as, the application for payment is made for the properties that were taxed. The Contractor shall not file for reimbursement for Sales Taxes before the Contractor has the right to file an application for payment for the properties that were taxed.
- 2. If the State refuses to refund any such Sales Tax to the City, or if after a refund is made, the City is told to return a refund to the State, the Contractor shall upon demand repay the City for the amount of the failed refunds.
- 3. The contractor or contractors to whom an award is made on this project will be required to follow the procedure outlined above.
- 4. The contractor is advised that all requests for payment, partial or final, for work completed under this contract must include a sales tax report submitted in accordance with the procedures outlined above.

