



**Tucker Coliseum Mechanical Room  
Phase 1 HVAC Renovation  
B025054: Bid Proposal**

**Russellville, Arkansas**

**10/23/2025**

**ATU Project No. B025054**

**BE Project No. ATU-002**



**Prepared by**



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INVITATION TO BID

Bid Proposal B025054: Tucker Coliseum Mechanical Room Phase 1 HVAC Renovation

Arkansas Tech University will accept sealed bids for the Tucker Coliseum Mechanical Room Phase 1 HVAC Renovation. Bid forms should be addressed to Jennifer Warren, APO, Director of Procurement at Arkansas Tech University and will be received at Arkansas Tech University, 404 N El Paso Ave., Russellville, AR 72801, (479) 968-0269 until 2:00 pm CST, Oct 23, 2025 and then publicly opened and read aloud at 404 N El Paso Ave., Russellville, AR 72801.

Details may be found on the ATU Procurement website: [www.atu.edu/purchasing](http://www.atu.edu/purchasing)

A mandatory pre-bid conference will be held on October 16<sup>th</sup>, at 10:00 am at Tucker Coliseum located at Arkansas Tech University, 1604 N Coliseum Dr., Russellville, AR 72801.

Building access and site work may begin no sooner than May 11, 2026 (after May Commencement) and must be completed by October 1<sup>st</sup>.

Arkansas Tech University reserves the right to reject any and all bids and to waive defects in bids.

Direct any questions about the bid specifications to Melanie Richardson, Brown Engineers, LLC, at 17200 Chenal Pkwy Ste. 300 PMB 324, Little Rock, AR 72223 501-448-0100 ext. 157.

Minority and small business vendors or contractors are encouraged to bid on any and all Arkansas Tech University projects.

Bids received later than the specified time and date will be returned to the bidder unopened.

END OF SECTION 00020

SECTION 00030

NOTICE TO CONTRACTORS

Sealed bids for Bid Proposal B025054: Tucker Coliseum Mechanical Room Phase 1 HVAC Renovation will be received by Arkansas Tech University, “Owner”, at Arkansas Tech University, 404 N El Paso Ave., Russellville, AR 72801, (479) 968-0269 until 2:00 pm CST, Oct 23, 2025 and then publicly opened and read aloud at 404 N El Paso Ave., Russellville, AR 72801.

Details may be found on the ATU Procurement website: [www.atu.edu/purchasing](http://www.atu.edu/purchasing)

All proposals shall be on the forms furnished with the Specifications and shall be enclosed in a sealed envelope addressed to “Jennifer Warren, APO, Director of Procurement at Arkansas Tech University” and marked "Bid for Bid Proposal B025054: Tucker Coliseum Mechanical Room Phase 1 HVAC Renovation.” Bids shall be accompanied by a cashier's or certified check upon a national or state bank in an amount not less than five percent (5%) of the total maximum bid price payable without recourse to Arkansas Tech University or a bid bond in the same amount from a reliable surety company, as a guarantee that the Bidder will enter into a contract and execute performance and payment bonds within ten (10) days after notice of award of Contract to Bidder. The notice of award of Contract shall be given by the Owner within ten (10) days following the opening of bids. The successful Bidder must furnish a performance and payment bond upon the form provided in the amount of one hundred percent (100%) of the contract price from an approved surety company holding a permit from the State of Arkansas to act as surety, or other surety or sureties acceptable to the Owner.

A mandatory pre-bid conference will be held on October 16<sup>th</sup>, at 10:00 am at Tucker Coliseum located at:

Arkansas Tech University  
1604 N Coliseum Dr.  
Russellville, AR 72801

Representatives of OWNER and ENGINEER will be present to discuss the Project. Bidders are required to attend and participate in the conference. Bidders will be required to inform themselves of all addenda duly issued.

Building access and site work may begin no sooner than May 11, 2026 (after May Commencement) and must be completed by October 1<sup>st</sup>.

All bidders must be licensed in accordance with the requirements of the Arkansas Contractors Licensing Board in accordance with Act 150 of the 1965, as amended. All bidders must be qualified in all respects to do business in Arkansas.

Bids will be considered on the basis of cost, the Bidder's financial responsibility, his equipment, and his past performance in completing similar work. Arkansas Tech University reserves the right to reject any or all bids, in whole or in part, or award items separately, or to waive informalities in bids received.

Bids must remain in effect for 60 days after the bid opening date.

## SECTION 00100

### INFORMATION FOR BIDDERS

#### 1. DEFINED TERMS

- 1.1 Terms used in these Instructions to Bidders, which are defined in the Standard General Conditions of the Construction Contract, have the meanings assigned to them in the General Conditions. The term "Bidder" means one who submits a Bid directly to OWNER, as distinct from Sub-Bidder, who submits a Bid to a Bidder. The term "Successful Bidder" means the lowest, qualified, responsible and responsive Bidder to whom OWNER (on the basis of OWNER'S evaluation as hereinafter provided) makes an award. The term "Bidding Documents" included the Advertisement or Invitation to Bid, Information for Bidders, the Bid Form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

#### 2. COPIES OF BIDDING DOCUMENTS

- 2.1 Complete sets of Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement or Invitation to Bid may be obtained from the OWNER. Deposit for Bidding Documents are non-refundable.
- 2.2 Complete sets of Bidding Documents shall be used in preparing Bids; the OWNER does not assume any responsibility for errors or misinterpretations resulting from the use of the incomplete sets of Bidding Documents.
- 2.3 The OWNER in making copies of Bidding Documents available on the above terms does so only for the purpose of obtaining Bids on the Work and does not confer a license or grant for any other use. All Bidding Documents shall remain the property of the OWNER and ENGINEER, and any use of the Bidding Documents for any purpose other than the bidding of the Project is strictly prohibited.

#### 3. QUALIFICATIONS OF BIDDERS

- 3.1 Each Bid must contain evidence of Bidder's qualifications to do business in the state where the Project is located.
- 3.2 Qualifications shall be submitted in a separate sealed envelope at the date and time listed on the Bid Proposal. Refer to Section 00420 – Statement of Bidder's Qualifications.

#### 4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

- 4.1 It is the responsibility of each Bidder before submitting a Bid, to (a) examine the Contract Documents thoroughly, (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work, (c) consider Federal, State and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work, (d) study and carefully correlate Bidder's observations with the Contract Documents, and (e) notify ENGINEER of all conflicts, errors or discrepancies in the Contract Documents.

- 4.1.1 Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.1.2. Become aware of the general nature of the work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents.
- 4.2 No geotechnical or subsurface information is provided for this work The Bidder shall make further investigations and tests as the Bidder deems necessary in order to provide the Work at the Contract Price, within Contract Time, and in accordance with the terms and conditions of the General Documents.
- 4.3 Information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to the Owner by Owners of such Underground Facilities or others, and Owner does not assume responsibility for the accuracy or completeness thereof, unless it is expressly provided otherwise in the Supplemental Conditions.
- 4.4 Provisions concerning responsibilities for the adequacy of data furnished to the prospective Bidders on subsurface conditions, Underground Facilities and other physical conditions, and possible changes in the Contract Documents due to differing conditions appear in Paragraph 4.2 and 4.3 of the General Conditions.
- 4.5 Before submitting a Bid, each Bidder will be responsible to make or obtain such explorations, tests and data concerning physical conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing the Work in accordance with the time, price and other terms and conditions the Contract Documents.
- 4.6 On request in advance, OWNER will provide each Bidder access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes, clean up and restore the site to its former condition upon completion of such explorations. A representative of the OWNER shall be present during all tests.
- 4.7 The lands upon which the Work is to be performed, rights of way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by the Contractor. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by OWNER.
- 4.8 Reference is made to the Supplementary Conditions for the identification of the general nature of work that is to be performed at the site by OWNER or others (such as utilities and other prime contractors) that relates to the work for which a Bid is to be submitted. On request, OWNER will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such work.

- 4.9 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Bidding Documents and that the written resolutions thereof by ENGINEER are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.
- 4.10 The provisions of 4.1 through 4.8, inclusive, do not apply to Asbestos, Polychlorinated Biphenyls (PCBs), Petroleum, Hazardous Waste or Radioactive Material covered by Paragraph 4.06 of the General Conditions.

#### PRE-BID CONFERENCE

- 4.11 A mandatory pre-bid conference will be held as stated in the Invitation to Bid. Representatives of OWNER and ENGINEER will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. ENGINEER will transmit to all prospective Bidders of record such Addenda, as ENGINEER deems necessary, in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

#### SITE AND OTHER AREAS

- 4.12 The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by CONTRACTOR in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Contract Documents.

#### 5. INTERPRETATIONS AND ADDENDA

- 5.1 All questions about the meaning or intent of the Contract Documents are to be directed in writing to ENGINEER. Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by ENGINEER as having received the Bidding Documents. Questions received less than three (3) days prior to the date for opening of Bids may not be answered. Only questions answered by formal, written Addenda will be binding. Oral and other interpretations will be without legal effect.
- 5.2 Prior to the deadline for receiving Bids, Addenda may also be issued to modify the Bidding Documents as deemed advisable by OWNER or ENGINEER.

6. BID SECURITY

6.1 Each Bid must be accompanied by Bid security made payable to OWNER in an amount of five (5) percent of the Bidder's maximum bid price and in the form of a certified or bank check or a Bid Bond (on form attached, if a form is prescribed), issued by a surety.

6.2 The Bid security of the Successful Bidder will be retained until Bidder has executed the Agreement and furnished the required Contract security, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required Contract security within ten (10) days after the Notice of Award, OWNER may annul the Notice of Award, and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earliest or the seventh (7th) day after the Effective Date of the Agreement or the sixty-first (61st) day after the Bid Opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within seven (7) days after the Bid opening.

7. CONTRACT TIME

7.1 The number of days within which the Work is to be substantially completed and also completed and ready for final payment (the Contract Time) are set forth in the Agreement and these Contract Documents.

8. LIQUIDATED DAMAGES

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

9. SUBSTITUTE OR "OR EQUAL" ITEMS

9.1 The Bid shall be base on the specific products or their approval equal described on the Drawings or written in the Specifications. Any product may be used which is specified by the referenced standards (such as ASTM) and which meets those standards. For products which are specified by naming one or more manufacturers preceded by "equal to" or followed by "or equal," a written request for substitution shall be submitted for approval by the ENGINEER. Such written requests will be considered up to ten (10) days prior to the scheduled Bid opening.

10. SUBCONTRACTORS, SUPPLIERS AND OTHERS

10.1 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, apparent Successful Bidder, and any other Bidder so requested, shall within five (5) working days after Bid opening submit to OWNER a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person or organization if requested by Owner. An Owner or Engineer who after due investigation has reasonable objection to any proposed

Subcontractor, Supplier, other person or organization, may before Notice of Award is given request apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price.

- 10.2 If apparent Successful Bidder declines to make any such substitution, OWNER may award the contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom OWNER or ENGINEER does not make written objection prior to the giving of Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in paragraph 6.06.B of the General Conditions.
- 10.3 No CONTRACTOR shall be required to employ any Subcontractor, Supplier, other person or organization against whom CONTRACTOR has reasonable objection.
- 10.4 Trade (including, but not necessarily limited to electrical, plumbing and mechanical) permits are required for the respective subcontractors to obtain City inspection.

## 11. BID FORM

- 11.1 The Bid Form is included with the Bidding Documents.
- 11.2 All blanks on the Bid Form must be completed in ink or by typewriter. Erasures and alterations must be initialed and dated by the signer in ink.
- 11.3 Unit process and lump sum amounts shall be shown in both words and figures. In case of discrepancy, the amount shown in words will govern and the unit price will govern over the extended amount.
- 11.4 Bids by corporations must be executed in the corporate name by the president or vice president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.
- 11.5 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- 11.6 All names must be typed or printed below the signature.
- 11.7 The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).
- 11.8 The address, telephone number, and fax number if applicable for communications regarding the Bid must be shown.
- 11.9 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of the authority to sign. The state of formation of the firm and the official address of the firm must be shown below the signature.

11.10 A Bid by an individual shall show the Bidder's name and official address.

11.11 A Bid by a joint venture shall be executed by each joint venture in the manner indicated on the Bid Form. The official address of the joint venture must be shown below the signature.

## 12. SUBMISSION OF BIDS

12.1 Bids shall be submitted at the time and place indicated in the Advertisement or Invitation to Bid. Bids shall be bound in the original project manual and shall be enclosed in an opaque sealed envelope, marked with the Project Title (and, if applicable, the designated position of the Project for which the Bid is submitted) and name, address, and contractor's license number of the Bidder, and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

## 13. MODIFICATION AND WITHDRAWAL OF BIDS

13.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

13.2 If, within twenty-four (24) hours after Bids are opened, any Bidder files a duly signed, written notice with the OWNER and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bids, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

## 14. OPENING OF BIDS

14.1 Bids will be opened and (unless obviously non-responsive) read aloud publicly. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to the Bidders after the opening of the Bids. Bids will be returned without being read aloud if all applicable portions of the Contract Documents are not met by the Bidder.

## 15. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

15.1 All Bids will remain subject to acceptance for sixty (60) days after the day of the Bid opening, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to that date.

## 16. AWARD OF CONTRACT

16.1 OWNER reserves the right to reject any and all Bids, to waive any and all informalities and to negotiate Contract terms with the Successful Bidder, and the right to disregard all nonconforming, non-responsive, unbalanced or conditional Bids. Also, OWNER reserves the right to reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is

not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by OWNER. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

- 16.2 In evaluating Bids, OWNER will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award. OWNER may accept any such alternatives in any order or combination, whether in the order in which they are listed in the Bid Form or not.
- 16.3 OWNER may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. OWNER also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.
- 16.4 OWNER may conduct such investigations as OWNER deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to OWNER's satisfaction within the prescribed time.
- 16.5 If the Contract is to be awarded, it will be awarded to the lowest Bidder whose evaluation by OWNER indicates to OWNER that the award will be in the best interest of the Project.
- 16.6 If the Contract is to be awarded, OWNER will give the Successful Bidder a Notice of Award within sixty (60) days after the day of the Bid opening.

#### SUPPLEMENTARY CONDITIONS

- 16.7 Attention of Bidders is directed to Supplementary Conditions, included in these documents for provisions concerning scope of work, completion time, availability of plans, specifications and other documents, payment and similar subjects.

#### 17. CONTRACT SECURITY

- 17.1 The General Conditions and the Supplementary Conditions set forth OWNER's requirements as to performance and payment Bonds and a Warranty Bond. When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by the required performance and payment Bonds. At the time of Final Acceptance, the Contractor shall provide the OWNER the Warranty Bond.

#### 18. SIGNING OF AGREEMENT

- 18.1 When OWNER gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement and all other written

Contract Documents attached. Within ten (10) days thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER with the required Bonds. Within ten (10) days thereafter, OWNER shall deliver one fully signed counterpart to Contractor. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

#### 19. PRE-BID CONFERENCE

- 19.1 A mandatory pre-bid conference will be held on October 16<sup>th</sup>, at 10:00 am at Tucker Coliseum located at:

Arkansas Tech University  
1604 N Coliseum Dr.  
Russellville, AR 72801

Representatives of OWNER and ENGINEER will be present to discuss the Project. Bidders are required to attend and participate in the conference. ENGINEER will transmit to all prospective Bidders of record such Addenda as ENGINEER considers necessary in response to questions arising at the conference. Bidders are reminded that any representation or understandings arising from any such Pre-Bid Conference shall not supercede the written provision of the Contract Documents themselves.

#### 20. RETAINAGE

- 20.1 Provisions concerning retainage are set forth in the General Contract and Supplemental Conditions.

#### 21. SPECIAL LEGAL REQUIREMENTS

- 21.1 Attention of Bidders is called to Act 150, Acts of Arkansas 1965, concerning the licensing of contractors to do business in Arkansas.
- 21.2 It is conclusively presumed that Bidders have familiarized themselves with Arkansas laws which may be applied to a Contract for the Work proposed herein as the aforementioned Acts are not exclusive. It is further conclusively presumed that Bidders have familiarized themselves with Federal and local laws, ordinances and regulations pertaining to the Work proposed herein.

END OF SECTION 00100

SECTION 00300

BID FORM

PROJECT IDENTIFICATION: Arkansas Tech University  
Bid no. B025054  
Tucker Coliseum Mechanical Room Phase 1 HVAC Renovation

THIS BID IS SUBMITTED TO: Jennifer Warren, APO, Director of Procurement  
Arkansas Tech University  
404 N El Paso Ave.  
Russellville, AR 72801

THIS BID IS SUBMITTED BY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

ARTICLE 1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in the Agreement and in accordance with the other terms and conditions of the Contract Documents.

ARTICLE 2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to BIDDERS, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for sixty (60) days after the day of Bid opening. BIDDER will sign and submit the Agreement with the Bonds and other documents required by the Contract Documents within fifteen days after the date of OWNER's Notice of Award.

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

3.1 BIDDER has examined copies of all the Contract Documents and of the following Addenda (receipt of which is hereby acknowledged):

Date	Number	Authorized Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

3.2 BIDDER has visited the site and become familiarized with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

3.3 BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as BIDDER considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraphs 4.02 and 4.03 of the General Conditions, and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by BIDDER for such purposes.

3.4 BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by BIDDER in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.04 of the General Conditions.

3.5 BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

3.6 BIDDER has given ENGINEER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER.

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

ARTICLE 4. Bidder will complete the Work in accordance with the Contract Documents for the following, as specified in text form, and numerically:

4.1 BIDDER'S BID AMOUNT

Item No.	Estimated Quantity	Unit	Description and Unit Price in Words	Total Amount (in Figures)
1	1	LS	All supervision, labor, materials, tools, equipment, incidentals and related items required for construction of the Tucker Coliseum Mechanical Room Phase 1 HVAC Renovation, the sum of _____ _____ Dollars and _____ Cents	\$ _____

The Tucker Coliseum Mechanical Room Phase 1 HVAC Renovation will be awarded to the lowest qualified BIDDER for the Work to be included.

4.2 PROPOSED SUBCONTRACTORS

The following information gives the name, business address, and portion of work (description and dollar amount of work to be done) for each subcontractor that will be used in the work if the BIDDER is awarded the Contract. No subcontractor doing work in excess of 3 percent of the total amount of the Bid who is not listed below shall be used without the written approval of the OWNER.

Additional supporting data may be attached to this page. Each page shall be sequentially numbered and headed "Proposed Subcontractors", and shall be signed.

<u>Firm Name</u>	<u>Contractor License#</u>	<u>Business Address</u>	<u>Description of Work</u>	<u>Dollar Amount</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

4.3 PROPOSED EQUIPMENT LIST

The BIDDER is required to list the major proposed equipment as outlined in the relevant Technical Specifications as part of the proposed Work.

<u>Specification</u>	<u>Equipment</u>	<u>Manufacturer</u>

ARTICLE 5. BIDDER agrees that the Work will be completed within the following time(s):

5.1 BIDDER agrees to be Substantially Completed with the Item No. 1 within **142 calendar days** of the effective date of the Notice to Proceed, and, if Substantial Completion is not achieved by this date, to pay **liquidated damages in the amount of \$500/day** for each additional day until Substantial Completion for Item No. 1 is achieved. **Building access and site work may begin no sooner than May 11, 2026 (after May Commencement) and must be completed by October 1<sup>st</sup>.** BIDDER agrees that the project will be completed and Ready for Final Payment within 30 calendar days after Substantial Completion of all contracted work in accordance with Article 14 of the General Conditions.

5.2 BIDDER accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to complete the Work within the times specified in the Agreement.

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

6.1 Required Bid Security in the form of a certified check or a Bid Bond in the amount of 5% of the total Bid price.

6.2 Noncollusion Affidavit.

ARTICLE 7. Communications concerning this Bid shall be addressed to the following address:

Melanie C. Richardson, PE  
Brown Engineers, LLC  
17200 Chenal Pkwy. Suite 300 PMB 324  
Little Rock, AR 72223  
Phone: (501) 448-0100 ext. 157

ARTICLE 8. The terms used in this Bid which are defined in the General Conditions or Instructions to BIDDERS will have the meanings assigned to them.

**BIDDER** submitting this **BID** is:

- A Corporation, incorporated in the State of \_\_\_\_\_
- A Partnership, consisting of the following partners, whose full names are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- An Individual whose full name is: \_\_\_\_\_

SUBMITTED on \_\_\_\_\_, 20\_\_ . \_\_\_\_\_  
(Name of BIDDER)

Approved By \_\_\_\_\_ (Authorized Signature) \_\_\_\_\_ (Title)

Attested By \_\_\_\_\_ (Authorized Signature) \_\_\_\_\_ (Address)

Seal  
(If a Corporation) \_\_\_\_\_ (City and State) \_\_\_\_\_ (Zip Code)  
\_\_\_\_\_  
(Telephone Number)  
\_\_\_\_\_  
(Facsimile Number)

END OF SECTION 00300

SECTION 00312

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned,  
\_\_\_\_\_  
\_\_\_\_\_ as Principal, and  
\_\_\_\_\_ as Surety, are hereby held and  
firmly bound unto the Arkansas Tech University, hereinafter called the OWNER in the penal sum of  
Five percent of the Amount Bid (5% of bid) \_\_\_\_\_ for payment of which,  
well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

The Condition of the above obligation is such that whereas the Principal has submitted to the  
Owner a certain BID, attached hereto and hereby made a part hereof to enter into a contract in writing, for  
Tucker Coliseum Mechanical Room Phase 1 HVAC Renovation at Arkansas Tech University  
\_\_\_\_\_  
\_\_\_\_\_.

NOW, THEREFORE,

- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract in the  
Form of Contract attached hereto (properly completed in accordance with said BID) and  
shall furnish a BOND for his faithful performance of said contract, and for the payment  
of all persons performing labor or furnishing materials in connection therewith, and shall  
in all other respects perform the agreement created by the acceptance of said BID, then  
this obligation shall be void, otherwise the same shall remain in force and effect; it being  
expressly understood and agreed that the liability of the Surety for any and all claims  
hereunder shall in no event exceed the penal amount of this obligation as herein stated.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such  
of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be  
signed by their proper officers, the day and year first set forth above.

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

\_\_\_\_\_  
(Principal)

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

\_\_\_\_\_  
(Surety)

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

END OF SECTION 00312

SECTION 00420

STATEMENT OF BIDDER'S QUALIFICATIONS – PRIME CONTRACTOR

All requests must be addressed in writing and the data given must be clear and comprehensive. All bidders shall submit a Statement of Qualifications that addresses the requested items listed below. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The BIDDER may submit any additional information he/she desires.

A. REQUESTS REGARDING BIDDER

1. Name of Bidder.
2. Permanent main office address.
3. When organized.
4. If a corporation, where incorporated.
5. How many years have you been engaged in the contracting business under your present firm or trade name?
6. Contracts on hand: (Schedule these, showing amount of each contract and the anticipated dates of completion.)
7. General character of work performed by your company.
8. Have you ever failed to complete any work awarded to you? (If so, where and why?)
9. Have you ever defaulted on a contract? (If so, where and why?)
10. List similar projects of the size and magnitude of this Project which were completed by your company, stating the cost for each and the month and year completed. Include the entity for which the work was performed with names, titles and phone numbers.
11. List your major equipment currently available for this contract and designate whether owned or leased.
12. Background and experience of field personnel currently employed by your organization who will perform the work.
13. Background and experience of the principal members (officers) of your organization. Include president, vice president, secretary, treasurer, etc.
14. Give Bank reference.

15. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the OWNER?
16. Give bonding agent and limit.
17. If subcontractor is to be used for this contract, state the percentage of work anticipated to be completed by subcontractor. If subcontractor is to perform work, a separate Statement of Bidder's Qualifications regarding subcontractor and the method used by the subcontractor. Refer to Section 00100.

Qualifications shall be submitted in a separate sealed envelope at the date and time listed on the Bid Proposal.

\_\_\_\_\_  
(Name of Bidder)

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

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

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_ being duly sworn deposes and says that he is \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_

and that the answers to the foregoing questions and all statements therein contained are true and correct.

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

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

My Commission expires \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_\_.

END OF SECTION 00420



SECTION 00500

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the \_\_\_\_\_th day of \_\_\_\_\_ in the year \_\_\_\_\_  
by and between ARKANSAS TECH UNIVERSITY (hereinafter called OWNER) and  
\_\_\_\_\_ (hereinafter called CONTRACTOR).

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

TUCKER COLISEUM MECHANICAL ROOM PHASE 1 HVAC RENOVATION,  
CONSISTING OF:

- Mobilization;
  - Delivery and storage of equipment and materials;
  - Demolition and removal of existing equipment and materials;
  - Installation of new equipment and materials; and
  - Other miscellaneous work related thereto.
2. The CONTRACTOR shall furnish all materials, supplies, tools, equipment, labor and other services necessary for the completion of the WORK described herein.
  3. The CONTRACTOR shall commence the WORK required by the CONTRACT DOCUMENTS on or before a date to be specified in the NOTICE TO PROCEED and completed and ready for final payment as specified in the Bid Form. The CONTRACTOR shall pay the OWNER, as liquidated damages, the sum specified in the Bid Form for each calendar day thereafter that WORK is not complete.
  4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein as shown in the BID PROPOSAL.
  5. The term CONTRACT DOCUMENTS shall mean and include the following:
    - 5.1 Invitation to Bid
    - 5.2 Information for Bidders

- 5.3 Supplemental Information for Bidders (where applicable)
  - 5.4 Bid Proposal
  - 5.5 Bid Bond
  - 5.6 Agreement Between Owner and Contractor
  - 5.7 Performance and Payment Bond
  - 5.8 Contractor's Act of Assurance Form (where applicable)
  - 5.9 MBE/WBE Compliance Evaluation Form (where applicable)
  - 5.10 General Conditions
  - 5.11 Supplemental Conditions – RLF (where applicable)
  - 5.12 Supplementary Conditions
  - 5.13 Prevailing Wage Rates
  - 5.14 Notice of Award
  - 5.15 Notice to Proceed
  - 5.16 Project Specifications
  - 5.17 Drawings Consisting of a Cover Sheet and Drawings
  - 5.18 Addenda numbers (to be issued if necessary).
  - 5.19 Change Orders (to be issued if necessary).
6. The Owner shall pay the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.
  7. The CONTRACTOR agrees to be Substantially Completed with the Item No. 1 of the Bid Form within 142 calendar days of the effective date of the Notice to Proceed, and, if Substantial Completion is not achieved by this date, to pay liquidated damages in the amount of \$500/day for each additional day until Substantial Completion for Item No. 1 of the Bid Form is achieved. The CONTRACTOR agrees that the project will be completed and Ready for Final Payment within 30 calendar days after Substantial Completion of all contracted work in accordance with Article 14 of the General Conditions.
  8. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have executed, or caused to be executed by their duly authorized officials, this Agreement in three (3) counterparts, each of which shall be deemed as an original.

OWNER

CONTRACTOR

\_\_\_\_\_  
PRINTED NAME:

\_\_\_\_\_  
PRINTED NAME:

BY \_\_\_\_\_  
(Signature)

BY \_\_\_\_\_  
(Signature)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST \_\_\_\_\_

ATTEST \_\_\_\_\_

Address for giving notices:

Address for giving notices:

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

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

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

END OF SECTION 00500

SECTION 00600

ARKANSAS STATUTORY PERFORMANCE AND PAYMENT BOND

WE, \_\_\_\_\_ as Principal, hereinafter called Principal, and \_\_\_\_\_ as Surety, hereinafter call the Surety, are held and firmly bound unto the Arkansas Tech University (Owner), for the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) for the payment whereof Principal and Surety bind themselves, their heirs, personal representatives, and successors, and assigns, jointly and severally, and firmly by these presents.

Principal has by written agreement dated \_\_\_\_\_ entered into a contract with Owner for Tucker Coliseum Mechanical Room Phase 1 HVAC Renovation \_\_\_\_\_, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

The condition of this obligation is such that if the Principal shall faithfully perform the Contract on his part and shall fully indemnify and save harmless the Owner from all cost and damage which he may suffer by reason of failure so to do and shall fully reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any such default, and, further, that if the Principal shall pay all persons all indebtedness for labor or materials furnished or performed under said contract failing which such persons shall have a direct right of action against the Principal and Surety jointly and severally under this obligation, subject to the Owner's priority, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

No suit, action or proceeding shall be brought on this bond outside the State of Arkansas. No suit, action or proceeding shall be brought on this bond except by the Owner after six months from the date final payment is made on the Contract, nor shall any suit, action or proceeding be brought by the Owner after two years from the date on which the final payment under the Contract falls due. Any Alterations which may be made in the terms of the contract or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the Contract, or any other forbearance on the part either of the Owner or Principal to the other shall not in any way release the Principal and the Surety or Sureties, or either or any of them, their heirs, personal representatives, successors, or assigns from their liability hereunder, notice to the Surety or Sureties of any such alteration, extension, or forbearance being hereby waived.

In no event shall the aggregate liability of the Surety exceed the sum set herein.

Executed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

\_\_\_\_\_ (Seal)

Principal

Witness: )

)

Attest: )

)

\_\_\_\_\_

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

\_\_\_\_\_ (Seal)

Surety

This Bond is given in compliance with Act 351 of 1953, as amended.

END OF SECTION 00600

SECTION 00640

WARRANTY BOND

We, \_\_\_\_\_, as principal (“Principal”), and \_\_\_\_\_ as surety (“Surety”) are hereby jointly and severally held and firmly bound unto Arkansas Tech University, as Obligee (“Owner”), for the payment of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), subject to the terms and conditions provided herein.

WHEREAS, Principal executed and entered into that certain Agreement with Owner dated \_\_\_\_\_, 20\_\_\_\_ (the Contract), the provisions of which are incorporated herein by reference, and unless otherwise defined herein all defined terms used or referred to herein shall have the meaning ascribed thereto in the Contract. In addition to other obligations and liabilities, the Contract required Principal to perform the Work for the Project and to furnish this Bond to Owner in compliance with Article 5 of the General Conditions and the Supplementary Conditions.

NOW THEREFORE, the obligations of Principal and Surety herein shall remain in full force and effect as provided herein, subject to becoming null and void upon the occurrence of either or both of the conditions that (a) Principal shall fully perform and satisfy all obligations and liabilities of Principal under the warranty and guarantee provisions of Sections 13.2 and 13.12 of the General Conditions, as modified or supplemented by the Supplementary Conditions or any other applicable Contract Documents, at any time within one year after the date of Final Acceptance or such longer period of time as may be prescribed therein (the “Warranty Period”), all of which includes without limitation either correcting the defective Work, or removing and replacing it with nondefective Work, or paying all direct, indirect or consequential costs of such correction or removal and replacement, all as provided therein, or (b) Owner shall fail to institute a lawsuit, action or other proceeding under this Bond before the expiration of three (3) months following the end of the Warranty Period.

FURTHER PROVIDED, that (a) any changes, modifications, amendments, alterations or supplementations in or to the Contract, and Contract Documents or the Work, or the giving by Owner of any extension of time for the performance of the Contract, or any other forbearance on the part of either Owner or Principal to the other, shall not in any way release the Principal or Surety, or either of them, from their liability hereunder, notice to the Surety of any of the forgoing being hereby waived, (b) in no event shall the aggregate liability of Surety exceed the amount set herein, and (c) the rights and

obligations hereof shall be binding upon and shall inure to the benefit of Principal, Surety, Owner and their respective heirs, legal representatives, partners, privies, successors and assigns, provided that nothing herein shall authorize the assignment of any such rights and obligations except upon compliance with Section 9.2 of the Contract.

Executed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

By \_\_\_\_\_

\_\_\_\_\_(Seal)

Witness: \_\_\_\_\_ )

)

Attest: \_\_\_\_\_ )

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_(Seal)

END OF SECTION 00640

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

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly By



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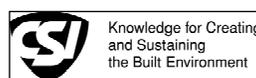
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These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

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## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

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#### 1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

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

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

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

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

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

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

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

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

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

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

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

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

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

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

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *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.

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

42. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain

administrative requirements and procedural matters applicable thereto.

44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

45. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

48. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

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

51. *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, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times

but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

### B. Intent of Certain Terms or Adjectives

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

### C. Day

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

### D. Defective

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

- a. does not conform to the Contract Documents, or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
- c. has been damaged prior to Engineer's - recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

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

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

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

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

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

## ARTICLE 2 - PRELIMINARY MATTERS

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### *2.01 Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

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

### *2.02 Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

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

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement

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

### *2.04 Starting the Work*

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

### *2.05 Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; 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.

### *2.06 Preconstruction Conference*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

### *2.07 Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer 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 component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

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3.01 *Intent*

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

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

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

3.02 *Reference Standards*

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

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

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or

responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. Resolving Discrepancies

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

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

b. the provisions of any Laws or Regulations applicable to the performance of the Work

(unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

### 3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, 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 Engineer's consultants, including electronic media editions; or

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

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

### 3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's

sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

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

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

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

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### 4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

#### 4.02 *Subsurface and Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

#### 4.03 *Differing Subsurface or Physical Conditions*

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

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

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

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

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

#### C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

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

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

#### B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will

promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

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

#### 4.05 *Reference Points*

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

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

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

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

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

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to

entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

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

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

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 - BONDS AND INSURANCE

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

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified

in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

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

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

#### 5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

#### 5.03 *Certificates of Insurance*

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

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

#### 5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from

claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

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

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

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

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

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

3. include completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

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

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

#### 5.05 *Owner's Liability Insurance*

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

#### 5.06 *Property Insurance*

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

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

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

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

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

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

6. include testing and startup; and

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

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

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

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any

deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

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

#### 5.07 *Waiver of Rights*

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

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

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

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

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

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

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

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

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract

Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

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

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

## ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

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#### 6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

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

received from the superintendent shall be binding on Contractor.

#### 6.02 *Labor; Working Hours*

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

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

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

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

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

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

#### 6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

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

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

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

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

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

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

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

#### 2. Substitute Items

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

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

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

**B. Substitute Construction Methods or Procedures:** If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

**C. Engineer's Evaluation:** Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

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

**E. Engineer's Cost Reimbursement:** Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract

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

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

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

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

**B.** If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

**C.** Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual

or entity except as may otherwise be required by Laws and Regulations.

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

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

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

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.07 *Patent Fees and Royalties*

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

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, 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.

#### 6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 6.09 *Laws and Regulations*

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

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

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

## 6.10 Taxes

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

## 6.11 Use of Site and Other Areas

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

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

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

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, 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 claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

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

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

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

## 6.12 Record Documents

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

## 6.13 Safety and Protection

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

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Draw-

ings or Specifications or to the acts or omissions of Owner or Engineer or , 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).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 *Safety Representative*

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

#### 6.15 *Hazard Communication Programs*

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

#### 6.16 *Emergencies*

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

#### 6.17 *Shop Drawings and Samples*

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

##### 1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

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

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

##### C. Submittal Procedures

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

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

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

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

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

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents

with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

#### *D. Engineer's Review*

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

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

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

#### *E. Resubmittal Procedures*

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

#### *6.18 Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or

disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

#### *6.19 Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

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

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

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

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

#### *6.20 Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or

arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

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

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

#### 6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal

shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## ARTICLE 7 - OTHER WORK AT THE SITE

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### 7.01 *Related Work at Site*

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

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and

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

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

#### 7.02 *Coordination*

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

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

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

#### 7.03 *Legal Relationships*

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

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

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

## ARTICLE 8 - OWNER'S RESPONSIBILITIES

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### 8.01 *Communications to Contractor*

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

### 8.02 *Replacement of Engineer*

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

### 8.03 *Furnish Data*

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

### 8.04 *Pay When Due*

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

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

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

### 8.06 *Insurance*

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

### 8.07 *Change Orders*

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

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

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

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

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

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9.01 *Owner's Representative*

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

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep

Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

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

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show

partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

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

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

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

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

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

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10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall

promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

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

#### 10.02 *Unauthorized Changes in the Work*

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

#### 10.03 *Execution of Change Orders*

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

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

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

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

#### 10.04 *Notification to Surety*

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

#### 10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

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

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,

2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

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### 11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

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

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and

Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

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

5. Supplemental costs including the following:

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

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

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

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

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

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have

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

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

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

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

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

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

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

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

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

**C. Contractor's Fee:** When all the Work is performed on the basis of cost-plus, Contractor's fee shall

be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

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

## 11.02 Allowances

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

### B. Cash Allowances

1. Contractor agrees that:

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

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

### C. Contingency Allowance

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

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

## 11.03 Unit Price Work

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

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

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

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

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

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

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

## ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

### 12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

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

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

## 12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

## 12.03 *Delays*

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

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

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### 13.01 *Notice of Defects*

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

### 13.02 *Access to Work*

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

### 13.03 *Tests and Inspections*

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

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

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

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

3. as otherwise specifically provided in the Contract Documents.

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

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

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

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

#### 13.04 *Uncovering Work*

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

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

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

#### 13.05 *Owner May Stop the Work*

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

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

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

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

#### 13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications .

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

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

#### 13.08 *Acceptance of Defective Work*

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

after such recommendation, an appropriate amount will be paid by Contractor to Owner.

#### 13.09 *Owner May Correct Defective Work*

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

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

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

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

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14.01 *Schedule of Values*

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

14.02 *Progress Payments*

A. Applications for Payments

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

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

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

B. *Review of Applications*

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

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an

experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and

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

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

#### *C. Payment Becomes Due*

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

#### *D. Reduction in Payment*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

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

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

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

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

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

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

#### 14.03 *Contractor's Warranty of Title*

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

#### 14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, , Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

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

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

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

#### 14.06 *Final Inspection*

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

#### 14.07 *Final Payment*

##### A. Application for Payment

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

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. consent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

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

satisfactory to Owner to indemnify Owner against any Lien.

*B. Engineer's Review of Application and Acceptance*

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

*C. Payment Becomes Due*

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

*14.08 Final Completion Delayed*

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

*14.09 Waiver of Claims*

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

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

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

**ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

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*15.01 Owner May Suspend Work*

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

*15.02 Owner May Terminate for Cause*

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

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

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

3. Contractor's disregard of the authority of Engineer; or

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

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety ) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

#### 15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate 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;

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

4. reasonable expenses directly attributable to termination.

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

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

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

## ARTICLE 16 - DISPUTE RESOLUTION

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### 16.01 *Methods and Procedures*

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

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

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

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or
2. agrees with the other party to submit the Claim to another dispute resolution process, or
3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

## ARTICLE 17 - MISCELLANEOUS

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### 17.01 *Giving Notice*

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

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

### 17.02 *Computation of Times*

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

### 17.03 *Cumulative Remedies*

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

### 17.04 *Survival of Obligations*

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

### 17.05 *Controlling Law*

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

### 17.06 *Headings*

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

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END OF SECTION

SECTION 00800  
SUPPLEMENTARY CONDITIONS

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1	STATE OF ARKANSAS PROVISIONS
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## SUPPLEMENTARY CONDITIONS

### PART I – AMENDMENTS TO GENERAL CONDITIONS

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

#### ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

SC-1.01A.12.

In the third line after the word “Agreement,” insert “the Invitation to Bid, Instructions to Bidders.”

SC-1.01A.19.

Delete Paragraph 1.01.A.19 in its entirety and replace with the following:

19. ENGINEER shall mean Brown Engineers, LLC, 17200 Chenal Pkwy. Ste. 300 PMB 324, Little Rock, AR 72223 or its designated representative.

SC-1.01A.27.

Insert the following in Paragraph 1.01A. as definition number 27. Renumber the remaining definitions to reflect the change.

27. MODIFICATION – (a) Written Amendment; (b) Change Order; (c) Field Order; (d) Work Change Directive

SC-1.01A.45.

Insert the following at the beginning of the definition.

“The Work required by the Contract has been completed except for work having a Contract Price of less than one percent of the then adjusted total contract price, or...”

SC-1.01A.53.

Add the following new definitions after Paragraph 1.01A.52 of the General Conditions:

53. Conditions of the Contract – The combined General Conditions and Supplementary Conditions.

54. Design Engineer – Same as Item 19, Engineer.

55. General Contractor – Same as Item 15, Contractor.

56. Supply Contractor – The individual or entity with whom General Contractor has entered into an agreement to furnish, or to furnish and install, the new equipment as specified herein.

SC-1.02B.

Delete Paragraph 1.02B of the General Conditions and replace with the following:

B. *Day*

1. A “calendar day” shall be a day of twenty-four hours measured from midnight to the next midnight, and is any day of the year, no days being exempted.
2. A “working day” shall be a day, not including Saturdays, Sundays or any of the following holidays: New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day. And Christmas Day, in which weather or other conditions not under the control of the CONTRACTOR will permit construction of the principal units of the work for a period of not less than seven hours between 7:00 a.m. and 6:00 p.m.

ARTICLE 2 - PRELIMINARY MATTERS

SC-2.05A.

Delete Paragraph 2.05A. of the General Conditions in its entirety and replace with the following:

A. *CONTRACTOR’S Review of Construction Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any work affected thereby. In the event of a conflict in the Drawings, Specifications, or other portions of the Contract Documents which were not reported prior to the Bidding of the Contract, the CONTRACTOR shall be deemed to have included the most expensive in his Bid.

SC-2.05C.

Delete Paragraph 2.05C of the General Conditions in its entirety and replace with the following:

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

SC-2.07A.

Amend Paragraph 2.07A. by adding the following:

Such acceptance of the contract completion schedule in no way affects the Contract Times.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

SC-3.01A.

Amend Paragraph 3.01A by adding the following:

The titles and headings contained in the contract documents and the subject organization are used only to facilitate reference, and in no way define or limit the scope or intent of any of the provisions of this contract.

SC-3.01C.

Add a new paragraph immediately after Paragraph 3.01C. of the General Conditions which is to read as follows:

D. Each and every provision of law and clause required by law to be inserted in these Contract Documents shall be deemed to be inserted herein, and they shall be read and enforced as though it were included herein, and is through mistake or otherwise, any such provision is not inserted, or if not correctly inserted, then upon the application of either party, the Contract Documents shall forthwith be physically amended to make such insertion.

E. The Contract Documents comprise the entire Agreement between OWNER and CONTRACTOR. The Contract Documents may be altered only by a Modification.

SC – 3.03A.

Delete 3.03A. in its entirety and replace with the following:

In the event of a conflict in the Drawings, Specifications, or other portions of the Contract Documents which were not reported prior to the Bidding of the Contract, the CONTRACTOR shall be deemed to have included the most expensive in his Bid.

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

SC-4.01.

Add a new paragraph immediately after Paragraph 4.01A of the General Conditions which is to read as follows:

1. If all lands and rights-of-way are not obtained as herein contemplated before construction begins. CONTRACTOR shall begin the Work upon such land and rights-of-way as OWNER has previously acquired.

SC-4.02.

Delete Paragraph 4.02 of the General Conditions in its entirety and replace with the following:

4.02 *Examination of Plans, Specifications and Site of the Work*

A. Bidders are advised that the plans, specifications and other documents listed in Paragraph 4.02C. shall constitute all the information which the OWNER shall furnish. Bidders are required, prior to submitting any proposal, to review the plans and read the specifications, proposal, contract and bond forms carefully; to visit the site of the work; to examine carefully local conditions; to inform themselves by their independent research, tests and investigations of the difficulties to be encountered and judge for themselves the accessibility of the work and all attending circumstances affecting the cost of doing the work or time required for its completion; and to obtain all information required to make an intelligent proposal.

B. No information given by the OWNER or any official thereof, other than that shown on the plans and contained in the specifications, proposals, and other contract documents, shall be binding upon the OWNER. Bidders shall rely exclusively upon their own estimates, investigations, tests and other data which are necessary for full and complete information upon which the proposal is based. Any bidder, by submitting his bid, represent and warrants: that he has prepared his bid in accordance with the specifications, with full knowledge and understanding of the terms and provisions thereof; that he has reviewed, studied and examined the bid prior to the signing and submission of same; and that he was cognizant of the terms of his proposal, verified his calculations and found them to correct and agrees to be bound thereby.

SC-4.05A.

Add a new paragraph immediately after Paragraph 4.05A of the General Conditions which is to read as follows:

B. ENGINEER may check the lines, elevations, reference marks, batter boards, etc., set by CONTRACTOR, and CONTRACTOR shall correct any errors disclosed by such check. Such a check shall not be considered as approval of CONTRACTOR's work and shall not relieve CONTRACTOR of the responsibility for accurate construction of the entire Work. CONTRACTOR shall furnish personnel to assist ENGINEER in checking lines and grades.

#### ARTICLE 5 – BONDS AND INSURANCE

SC-5.02A.

Delete Paragraph 5.02A of the General Conditions in its entirety and replace with the following:

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

SC-5.03A.

Delete the following from Paragraph 5.03A.:

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

Replace with:

Insurance certificates must be submitted and issued with the "Owner" listed as the certificate holder.

Add a new paragraph at the end of Paragraph 5.03A which reads as follows:

B. All policies shall be endorsed to read: "Said policy shall not be cancelled, nonrenewed or materially changes without thirty (30) days advance written notice begin given to the Owner Except when the policy is being cancelled for nonpayment of premium in which case ten (10 ) days advance written notice is required."

SC-5.04B.1.

Add the following at the end of Paragraph 5.04B.1:

The following are to be listed as additional insured on all insurance policies:

Arkansas Tech University  
Brown Engineers, LLC

SC-5.04.

Add a new paragraph immediately after Paragraph 5.04B.7 of the General Conditions which is to read as follows:

8. CONTRACTOR may purchase and maintain excess liability insurance in the umbrella form in order to satisfy the limits of liability required for the insurance to be purchased and maintained in accordance with Paragraph 5.04. Evidence of such excess liability shall be delivered to OWNER in accordance with Paragraph 2.05 in the form of a certificate indicating the policy numbers and limits of liability of all underlying insurance. The umbrella liability insurance shall have a combined single limit of not less than \$5,000,000.

SC-5.05A.

Delete Paragraph 5.05A of the General Conditions in its entirety and insert the following in its place:

A. CONTRACTOR shall purchase and maintain a separate Owner’s Protective Liability policy, issued to OWNER at the expense of CONTRACTOR, including OWNER and ENGINEER as named insured. This insurance shall provide coverage for not less than the following amounts:

5.05A.1	Bodily Injury	\$1,000,000	Each Occurrence
5.05.A.2	Property Damage	\$1,000,000	Each Occurrence
		\$2,000,000	Annual Aggregate

SC-5.06A.

Delete Paragraph 5.06A of the General Conditions in its entirety and replace with the following:

A. CONTRACTOR shall purchase and maintain property insurance upon the Work at the site on a replacement cost basis with a limit not less than 100% of the Project’s replacement value thereof (subject to such deductible amounts as may be provided in these Supplementary Conditions or required by Laws and Regulations). This limit should include “soft cost,” or expenses relating to the construction project(s) over and above those costs which would have been incurred if there has been no loss. These soft costs should include, but not be limited to, interest, additional taxes, advertising/promotional expenses, additional commissions, loss of rents, architects or engineering fees. This insurance shall:

1. Include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER’s Consultants and any other persons or entities identified in Paragraph 5.04B.1 of these Supplementary Conditions, each of whom shall have an insurable interest and shall be listed as an additional insured.
2. be written on a Builder’s Risk “all risk” or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, false work, and Work in transit and shall insure against at least the following perils: fire, lightning,

extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other causes of loss as may be specifically required by the Supplemental Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
4. cover materials and equipment in transit to the Project site, and materials that the CONTRACTOR has taken possession of whether stored at the Project site;
5. allow for Partial Utilization of the Work by OWNER;
6. include testing and startup; and,
7. Be maintained in effect until final payment is made unless otherwise agreed to in writing by the OWNER, CONTRACTOR, and ENGINEER with thirty (30) days' written notice to each other additional insured to whom a certificate of insurance has been issued.

The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with Paragraph 5.06A shall comply with the requirements of Paragraph 5.06C.

SC-5.06B.

Delete Paragraph 5.06B of the General Conditions in its entirety and replace with the following:

B. CONTRACTOR shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER'S Consultants and any other persons or entities identified in Paragraph 5.04B.1 of these Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

SC-5.06C.

Amend Paragraph 5.06C by adding the following to the end of the sentence:

and will contain a waiver of subrogation by the insurance company against the OWNER and each additional insured.

SC-5.06D.

Delete Paragraph 5.06D of the General Conditions in its entirety and replace with the following:

D. OWNER shall not be responsible for purchasing and maintaining any insurance to protect the interest of the CONTRACTOR, Subcontractor, or others in the Work. The stated limits of insurance may be basic policy limits or any combination of basic limits and umbrella limits. In any event, CONTRACTOR is fully responsible for all losses arising out of, resulting from or connected with operations under this contract whether or not said losses are covered by insurance. The acceptance of certificates or other evidence of insurance by the OWNER, ENGINEER, and/or other listed as additional insured in Paragraph 5.04B.1 that in any respect do not comply with the Contract requirements does not release the CONTRACTOR from compliance herewith.

SC-5.06E.

Delete Paragraph 5.06E of the General Conditions in its entirety.

SC-5.07.

Delete Paragraph 5.07 of the General Conditions in its entirety.

SC-5.08A.

Delete Paragraph 5.08A of the General Conditions in its entirety.

SC-5.08B

Delete Paragraph 5.08B of the General Conditions in its entirety.

SC-5.09A.

Delete Paragraph 5.09A of the General Conditions in its entirety and insert the following in its place:

A. If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with this Article 5 on the basis of its not complying with the Contract Documents, OWNER will notify CONTRACTOR in writing thereof within ten days of the date of delivery of such certificates to OWNER in accordance with Paragraph 2.05. CONTRACTOR will provide such additional information in respect of insurance provided by CONTRACTOR as OWNER may reasonably request.

#### ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

SC-6.02.

Add the new paragraphs immediately after Paragraph 6.02B of the General Conditions which is to read as follows:

C. Regular working hours are defined as 8 hours per day, Monday through Friday, excluding holidays, between the hours of 7:00 a.m. and 7:00 p.m. Requests to work other than regular working hours shall be submitted to ENGINEER not less than 48 hours prior to any proposed weekend work or scheduled extended work weeks. Occasional unscheduled overtime on weekdays may be permitted provided two hours’ notice is given to ENGINEER.

D. CONTRACTOR shall reimburse the OWNER for additional engineering and/or inspection costs incurred as a result of overtime work in excess of the regular working hours stipulated in Article SC-6.02.C. At OWNER’s option, overtime costs may either be deducted from the CONTRACTOR’s monthly payment request or deducted from the CONTRACTOR’s retention prior to release of final payment. Overtime costs for the OWNER’s personnel shall be based on the individual’s current overtime wage rate. Overtime costs for personnel employed by the ENGINEER or OWNER’s independent testing laboratory shall be calculated in accordance with the terms of their respective contracts with the OWNER.

SC-6.03.

Add the following new paragraphs immediately after Paragraph 6.03B of the General Conditions.

C. This agreement is subject to the applicable provisions of the Contract Work Hours and Safety Standards Act, Public Law 87-581, 87<sup>th</sup> Congress. No Contractor or Subcontractor contracting for any part of the Work shall require or permit any laborer or mechanic to be employed on the Work in excess of forty hours in any work week unless such laborer or mechanic receives compensation at a rate not less

than one and one-half times that person's basic rate of pay for all hours worked in excess of forty hours in such work week.

D. CONTRACTOR shall employ only competent persons to do the work and whenever OWNER shall notify CONTRACTOR in writing that any person on the Work appears to be incompetent, disorderly, or otherwise unsatisfactory, such person shall be removed from the Project and shall not again be employed on it except with the consent of OWNER.

E. CONTRACTOR and Subcontractors shall, insofar as practicable, give preference in the hiring of workers for the Project to qualified local residents with first preferences being given to citizens of the United States who have served in the armed forces of the United States and have been honorably discharged therefrom or released from active duty therein.

SC-6.05A.

Delete Paragraph 6.05A of the General Conditions in its entirety and replace with the following:

6.05                    *Substitutes and "Or Equals"*

A. Where equipment and products are specified by name, no substitutions or "or-equals" will be considered or approved unless the term "or-equal" is included in the acceptable manufacturer section of the Specifications.

1. If substitutions or "or-equals" are specifically permitted for consideration by the individual Specifications, they must be submitted and will be reviewed and evaluated in accordance with the provisions established in General Condition Paragraph 6.05 and in Division 1 of the Specifications.

SC-6.05C.

Amend Paragraph 6.05C by deleting the third sentence and replacing it with the following:

No "or-equals" or substitutes will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order or Field Order.

SC-6.06.

Delete Paragraphs 6.06A and 6.06B of the General Conditions in their entirety and insert therefore the following:

A. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom OWNER may have reasonable objection. Acceptance of any Subcontractor, other person or organization by OWNER shall not constitute a waiver of any right of OWNER to reject defective Work. CONTRACTOR shall not be required to employ any Subcontractor, other person or organization against whom CONTRACTOR has reasonable objection unless called for in the Contract Documents.

B. Not Used.

SC-6.06G.

Add a new paragraph immediately after Paragraph 6.06G of the General Conditions which is to read as follows:

H. OWNER or ENGINEER may furnish to any such Subcontractor, Supplier or other person or organization, to the extent practicable, information about amounts paid to CONTRACTOR in accordance with CONTRACTOR's Applications for Payment on account of the particular Subcontractor's, Supplier's, or other organization's Work.

SC-6.08A.

Delete Paragraphs 6.08A of the General Conditions in their entirety and insert therefore the following:

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement.

SC-6.10A.

Add the following language at the end of Paragraph 6.10A of the General Conditions:

The OWNER qualifies as an exempt agency as defined by the statutes of the State of Arkansas. The CONTRACTOR shall comply with all statutes and ruling of the State Comptroller.

SC-6.16A.

Amend Paragraph 6.16A by revising the last sentence to read:

If ENGINEER determines that the incident giving rise to the emergency action was not the responsibility of the CONTRACTOR and that a change to the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued.

SC-6.17E.1.

Add a new sentence at the end of Paragraph 6.17.E.1 to read as follows:

Approval of Shop Drawings for equipment requiring Efficiency Guarantee Bonds will be withheld until the receipt of such Bonds.

SC-6.17E.1.

Delete the last sentence in Paragraph 6.17E.1 and replace with the following:

All resubmittals shall be in strict compliance with the Drawings, Specifications and Contract Documents, and only the changes permitted from the prior submittal shall be modifications of additional information addressing specifically the ENGINEER's previous comments.

SC-6.18A.

Amend Paragraph 6.18A of the General Conditions by adding the following at the end of the second sentence:

CONTRACTOR assumes and bears responsibility for all costs and time delays associated with any variation from the requirements of the Contract Documents.

SC-6.19D.

Add the following new paragraph immediately after Paragraph 6.19C which is to read as follows:

#### Manufacturer's Guaranty/Warranty

The CONTRACTOR shall obtain the following guarantee/warranty from the manufacturer of all major pieces of equipment furnished and installed on this Project. Such guaranty/warranty shall be for the benefit of OWNER and shall be furnished in writing by the manufacturer. The CONTRACTOR's and manufacturer's obligations under this provision are in addition to other express or implied warranties under the Contract Documents and under the law and in no way diminish any other right that the OWNER may have against the CONTRACTOR or manufacturer for faulty material, equipment or work. The warranty period shall not be interpreted as a limitation on the time in which the OWNER can enforce such other duties, obligations, rights, or remedies.

The manufacturer warrants and guarantees for a period of one year from the date of Substantial Completion, or such longer period that may be specified in the Contract Documents, that all materials equipment furnished shall be free from flaws, defects in material and workmanship and shall be in conformance with the Contract Documents.

SC-6.20A.2.

Delete Paragraph 6.20A.2 of the General Conditions in its entirety and replace with the following:

2. IS CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, ANY SUPPLIER, OR ANY INDIVIDUAL OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM ANY OF THE WORK OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. REGARDLESS OF WHETHER OR NOT CAUSED BY ANY NEGLIGENCE OR OMISSION OF AN INDIVIDUAL OR ENTITY INDEMNIFIED HEREUNDER OR WHETHER LIABILITY IS IMPOSED UPON SUCH INDEMNIFIED PARTY BY LAWS AND REGULATIONS REGARDLESS OF THE NEGLIGENCE OF ANY SUCH INDIVIDUAL OR ENTITY. If through the acts of neglect on the part of CONTRACTOR, any other Contractor or any Subcontractor shall suffer loss or damage on the Work, CONTRACTOR shall settle with such other Contractor or Subcontractor by agreement or arbitration if such other Contractor or Subcontractor will so settle. If such other Contractor or Subcontractor shall assert any claim against OWNER on account of any damage alleged to have been sustained, OWNER shall notify CONTRACTOR, who shall indemnify and save harmless OWNER against any such claims.

#### Article 8. OWNER's RESPONSIBILITIES

SC-8.01.

Delete Paragraph 8.01 of the General Conditions in its entirety and replace it with the following:

8.01 *Communications to Contractor*

A. OWNER will issue project communications related to the administration of the Construction Contract through the ENGINEER.

SC-8.02A.

Delete Paragraph 8.02A of the General Conditions in its entirety and replace it with the following:

A. In the case of termination of the employment of the ENGINEER, OWNER will notify the CONTRACTOR of their intent to appoint a different engineer to the Project. CONTRACTOR may voice any objections with regard to the OWNER's replacement engineer within a reasonable time set by the OWNER and OWNER will take these objections (if any) into consideration before appointing the new engineer.

SC-8.06.

Delete Paragraph 8.06 of the General Conditions in its entirety.

SC-8.09A.

Amend Paragraph 8.09A of the General Conditions by adding the following at the end of the second sentence:

Any failure or neglect on the part of OWNER or ENGINEER to enforce provisions herein dealing with supervision, control, inspection, testing or acceptance and approval of the Work shall never operate to relieve CONTRACTOR from full compliance with the Contract Documents nor render OWNER liable to CONTRACTOR for money damages, extensions of time or increased compensation of any kind.

SC-8.10.

Delete Paragraph 8.10 in its entirety.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

SC-9.01.

Delete Paragraph 9.01 of the General Conditions in its entirety and replace with the following:

9.01 *Authority of ENGINEER*

A. ENGINEER is the OWNER's representative during the construction period. However, any determination made by the ENGINEER is subject to the review and approval of the OWNER and the OWNER's determination shall be final.

SC-9.04.

Delete Paragraph 9.04 of the General Conditions in its entirety and replace with the following:

9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents.

SC-9.05.

Delete Paragraph 9.05 of the General Conditions in its entirety and replace with the following:

9.05 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order. The CONTRACTOR shall notify the ENGINEER in writing prior to beginning any Work addressed in a Field Order if the CONTRACTOR does not agree that the Work involved represents no additional cost and/or time change in the Contract Documents.

SC-9.08.

Delete Paragraph 9.08 of the General Conditions in its entirety and replace with the following:

9.08 *Determination for Unit Price Work*

A. 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 is subject to the review and approval of the OWNER and the OWNER's determination shall be final as provided in 9.01A.

SC-9.09

Delete Paragraph 9.09 of the General Conditions in its entirety and replace with the following:

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

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of Paragraph 10.05, with a request for a formal decision. ENGINEER's formal decision thereon is subject to the review and approval of the OWNER and the OWNER's determination shall be final as provided by Paragraph 9.01A.

B. The rendering of a decision by ENGINEER pursuant to this Paragraph 9.09 and the review and final decision by OWNER thereof, with respect to any such claim, dispute or other matter (except any which have been waived by the acceptance of final payment as provided in Paragraph 14.07) will be a condition precedent to any exercise by CONTRACTOR of any rights or remedies it may otherwise have

under the Contract Documents or by Laws and Regulations in respect to any such claim, dispute or other matter.

SC-10.05.

Delete Paragraph 10.05 of the General Conditions in its entirety and replace with the following:

10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER promptly (but in no event later than 7 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to ENGINEER within 30 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event.

B. ENGINEER will issue a written recommendation to the Owner in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

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

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

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

SC-11.01A.

Amend Paragraph 11.01A of the General Conditions by striking out the following words in the third sentence: "those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01B." and adding the following:

"those paid for the Work included in the Contract Price, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01B. CONTRACTOR shall provide certified payroll records listing personnel classifications and salaries for all individuals involved in additional Work. Salaries for those not included in the certified payroll will be considered as being compensated under Paragraph 11.01B."

SC-11.01A.1.

Amend Paragraph 11.01A.1 of the General Conditions by striking out the following words in the second sentence: "without limitation superintendents, foreman" and adding the following:

"one foreman (unless agreed upon prior to beginning Work)."

Amend Paragraph 11.01A of the General Conditions by striking out the following words in the last sentence: “Be included in the above” and adding the following:

“not exceed 1.5 times regular pay and shall be included in the above”

SC-11.01B.1.

Amend Paragraph 11.01.B.1 by adding the following to the list of excluded personnel in the first sentence:

Superintendents

SC-11.01D.

Amend Paragraph 11.01D by modifying the sentence to read as follows:

“...and submit in a form and at intervals acceptable to ENGINEER...”

SC-11.02.

Delete Paragraphs 11.02A and 11.02B of the General Conditions in their entirety.

SC-11.03.

Delete Paragraph 11.03C of the General Conditions in its entirety and replace with the following:

- C. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment in accordance with Paragraph 10.05 under the following conditions:
  - 1. If the total cost of a particular item of Unit Price Work amounts to 20 percent or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by the Contractor differs by more than 20 percent from the estimated quantity of such item indicated in the Agreement; and,
  - 2. If there is no corresponding adjustment with respect to any other item of Work; and,
  - 3. If CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof; or if OWNER believes that the quantity variation entitles OWNER to an adjustment in the unit price, either OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Paragraph 11.01 if the parties are unable to agree as to the effect of any such variation in the quantity of the Unit Price Work.

SC-11.03

Add new paragraph following Paragraph 11.03 of the General Conditions which is to read as follows:

11.04            *No Claims for Delays*

A. The CONTRACTOR agrees to make no claims for damage for delay in the performance of the Contract occasioned by any act or omission to act of the OWNER, ENGINEER, or any of the ENGINEER’s or OWNER’s agents, and agrees that any such claim shall be fully compensated by an

extension of time, as set forth in a Change Order, to complete performance of the Work as provided herein.

## ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIME

SC-12.01A.

Delete Paragraph 12.01 of the General Conditions in its entirety and replace with the following:

A. The Contract Price may only be changes by a Change Order or Written Amendment. Any claim by CONTRACTOR for an adjustment in the Contract Price shall be in writing to the ENGINEER and will be processed in accordance with Article 10 hereof.

SC-12.01B.2.

Delete Paragraph 12.01B.2 of the General Conditions in its entirety.

SC-12.02A.

Delete Paragraph 12.02A of the General Conditions in its entirety and replace with the following:

A. The Contract Times (or Milestones) may only be changed by a Change Order or Written Amendment which shall be processed in accordance with Article 10 hereof.

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

13.04 *Uncovering Work*

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

B. In circumstances different from 13.04A above, if ENGINEER considers it necessary or advisable that covered Work be observed by the ENGINEER or inspected or tested by others, CONTRACTOR at ENGINEER's request shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitles to an appropriate decrease in the Contract Price.

SC-13.05.

Add a new paragraph immediately after Paragraph 13.05A of the General Conditions to read as follows:

1. If OWNER stops Work under Paragraph 13.05A, CONTRACTOR shall be entitled to no extension of Contract Time or increase in Contract Price.

SC-13.07A.

Add a new paragraph immediately after Paragraph 13.07A of the General Conditions to read as follows:

When early acceptance of a Substantially Completed portion of Work is accomplished in the manner indicated, the correction period for that portion of the Work shall commence at the time of substantial completion of that Work.

SC-13.08A.

Delete Paragraph 13.08A of the General Conditions in its entirety and replace with the following:

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

SC-13.09C.

Delete Paragraph 13.09C of the General Conditions in its entirety and replace with the following:

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

#### ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02A.3.

Delete Paragraph 14.02A.3 of the General Conditions in its entirety and replace with the following:

3. The amount of retainage with respect to progress payments will be five percent (5%) of the total amount of completed Work and properly stored materials on hand. In addition to the amount retained above, the OWNER may retain additional amounts as set forth elsewhere in the Contract Documents.

Add a new paragraph immediately after Paragraph 14.02A.3 of the General Conditions which is to read as follows:

4. CONTRACTOR shall furnish evidence that payment received on the basis of materials and equipment not incorporated and suitably stored has in fact been paid to the respective supplier(s) within sixty days of payment by OWNER. Failure to provide such evidence of payment may result in the withdrawal of previous approval(s) and removal of the cost of related materials and equipment from the next submitted Application of Payment.

SC-14.02C.1.

Amend Paragraph 14.02C.1 of the General Conditions by striking out the word “Ten” and inserting the word “thirty” in its place, and as so amended, Paragraph 14.02C.1 remains in effect.

Add four new paragraphs immediately after Paragraph 14.02C.1 of the General Conditions which are to read as follows:

2. Should Contractor neglect to pay any undisputed claims made in writing to OWNER within thirty days after completion of the Work, but continuing unsatisfied for a period of ninety days, OWNER may pay such claim and deduct the amount thereof from the balance due CONTRACTOR. OWNER may also, with the written consent of CONTRACTOR, use any monies retained, due, or to become due under this Contract for the purpose of paying for both labor and materials for the Work, for which claims have not been filed.

3. Security is provided both by the Payment Bond and the power of OWNER to retain any monies for its claims, but payment by one shall in no way impair or discharge the liability of the other.

4. Any and all items for work and materials may be paid off by OWNER within a reasonable time after filing for record in accordance with State and local laws, a notice of such liens except where the claim on which the lien is filed is being litigated by CONTRACTOR, and in such case OWNER may pay the amount of any final judgment or decree or any such claim within a reasonable time after such final judgment or decree shall be rendered.

5. All monies paid by OWNER in settlement of liens as aforesaid, with the costs and expenses incurred by OWNER in connection therewith, shall be charged to CONTRACTOR, shall bear interest at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank, and shall be deducted from the next payment due CONTRACTOR under the terms of this Contract.

SC-14.02D.1.

Delete Paragraph 14.02D.1. d. Add new paragraphs immediately after Paragraph 14.02D.1.C of the General Conditions which are to read as follows:

- d. Owner has been notified of CONTRACTOR’s failure to make payments to Subcontractors or Suppliers or for labor;
- e. CONTRACTOR’s failure to submit up-to-date record documents as required by GC-6.12;
- f. CONTRACTOR’s failure to submit monthly progress schedule updates or revised schedules as requested by the OWNER or ENGINEER;
- g. CONTRACTOR’s failure to provide Project photographs required by Specifications;

- h. Unsatisfactory progress of the Work not caused by conditions beyond the CONTRACTOR's control;
- i. CONTRACTOR's failure to carry out instructions of the OWNER or his representative;
- j. OWNER has a reasonable doubt that the contract can be completed for the balance then unpaid;
- k. Damage to another contractor;
- l. Claim filed by or against CONTRACTOR or reasonable evidence indicating probable filing of claims;
- m. OWNER has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02B.5.a through 14.02B.5.l or Paragraph 15.02A.

SC-14.02D.3.

Add a new paragraph immediately after Paragraph 14.02D.3 of the General Conditions which is to read as follows:

- 4. OWNER may permanently withhold payment from Contract Price for
  - a. liquidated damages incurred by CONTRACTOR, or
  - b. Compensation for ENGINEER for overtime charges of Residential Project Representative, third and subsequent reviews of submittals, review of substitutions, reinspection fees, inspections or designs related to correction of defective Work, or other Services identified as requiring payment by the CONTRACTOR. Compensation will be based on the following rates:

<b>Position</b>	<b>Hourly Rate</b>
<b>Principal in Charge/Project Manager</b>	<b>\$260.00</b>
<b>Project Engineer</b>	<b>\$224.00</b>
<b>Resident Project Representative</b>	<b>\$210.00</b>
<b>Design Engineer</b>	<b>\$148.00</b>
<b>Technician</b>	<b>\$120.00</b>
<b>Clerk</b>	<b>\$107.00</b>
<b>Other Direct Costs will be billed at the actual cost multiplied by 1.5</b>	

- c. Costs for tests performed by the OWNER to verify that work previously tested and found to be defective has been corrected. Verification testing is to be provided at the CONTRACTOR's expense to verify products or constructed works are in compliance after corrections have been made.

SC-14.03A.

Add two new paragraphs immediately after Paragraph 14.03A of the General Conditions which are to read as follows:

- B. No materials or supplies for the Work shall be purchased by CONTRACTOR or Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. CONTRACTOR warrants that CONTRACTOR has good title

to all materials and supplies used by CONTRACTOR in the Work, free from all liens, claims or encumbrances.

C. CONTRACTOR shall indemnify and save OWNER harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract.

CONTRACTOR shall at OWNER's request furnish satisfactory evidence that all obligation of the nature hereinabove designated have been paid, discharged, or waived. If CONTRACTOR fails to do so, the OWNER may, after having served written notice to the said CONTRACTOR, either pay unpaid bills, of which OWNER has written notice, direct, or withhold from the CONTRACTOR's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to CONTRACTOR shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon OWNER to either CONTRACTOR or CONTRACTOR's Surety. In paying any unpaid bills of the CONTRACTOR, OWNER shall be deemed the agent of CONTRACTOR and any payment so made by OWNER shall be considered as payment made under the Contract by OWNER to CONTRACTOR and OWNER shall not be liable to CONTRACTOR for any such payment made in good faith.

SC-14.04.

Delete Paragraph 14.04 of the General Conditions in its entirety and replace with the following:

14.04            *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefore. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall thereafter review the tentative certificate of Substantial Completion and make a final determination as to substantial completion which will be communicated to the CONTRACTOR in writing within 20 days after receipt of the tentative certificate.

SC-14.07B.1

Delete Paragraph 14.07B.1 from the General Conditions in its entirety and replace with the following:

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of final Application for Payment and accompanying documentation, all as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. Thereupon ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, ENGINEER will return the Application 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. If the Application and accompanying documentation are appropriate as to form and substance, OWNER shall in accordance with the applicable State or local General Law, pay CONTRACTOR the amount recommended the ENGINEER.

SC-14.07C.

Add a new paragraph immediately after Paragraph 14.07C of the General Conditions which is to read as follows:

D. In the event the CONTRACTOR fails to attain Substantial Completion of the entire Project (all bid items) within the Contract Time, the OWNER may withhold money permanently from the CONTRACTOR's total compensation a sum of \$500 per day as liquidated damages and for added expenses including engineering services, etc. The OWNER will be the sole judge as to whether the work has been completed within the allotted time. Accordingly, it is agreed and understood that said amount is to be assessed by the OWNER, not as a penalty, but as a predetermined and agreed upon liquidated damage. Additionally, assessment of liquidated damages by the OWNER shall not constitute a waiver of the OWNER's right to sue and collect additional damages which OWNER may sustain by the failure of the CONTRACTOR to perform in accordance with the terms of its Contract.

SC-14.08A.

Delete Paragraph 14.08 of the General Conditions in its entirety and replace with the following:

A. If after Substantial Completion of the Work final completion thereof is materially delayed through no fault of the CONTRACTOR, and the ENGINEER so confirms, OWNER, upon certification by ENGINEER, and without terminating the Agreement, may make payment of all or a portion of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for the Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in Paragraph 5.01, the written consent of the Surety to payment of the balance due to that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to ENGINEER prior to certifications of such payment. Such payment, if approved, shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

SC-14.09.

Delete Paragraph 14.09 of the General Conditions in its entirety and replace with the following:

14.09 *Waiver of Claims*

A. The acceptance of final payment by the CONTRACTOR shall constitute a waiver of all claims by CONTRACTOR against OWNER.

## ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

SC-15.01.

Delete Paragraph 15.02 of the General Conditions in its entirety and replace with the following:

15.01 *Owner's Right to Temporarily Suspend Work*

A. Reasons for Suspension. The OWNER shall have the right by written order to temporarily suspend the Work, in whole or in part, whenever, in the judgment of the OWNER, such temporary suspension is required:

1. in the interest of the OWNER generally;
2. due to government or judicial controls or orders which make performance of this Contract temporarily impossible or illegal;
3. to coordinate the work of separate contractors at the job site;
4. to expedite the completion of a separate contract even though the completion of this particular contract may be thereby delayed;
5. because of weather conditions unsuitable for performance of the work; or
6. because the CONTRACTOR is proceeding contrary to contract provisions or has failed to correct conditions considered unsafe for workmen.

B. The written order of the OWNER to the CONTRACTOR shall state the reasons for suspending the Work and the anticipated periods for such suspension. Upon receipt of the OWNER's written order, the CONTRACTOR shall suspend the work covered by the order and shall take such means and precautions as may be necessary to properly protect the finished and partially finished work, the unused materials and uninstalled equipment, including the providing of suitable drainage about the work without written direction from the ENGINEER and shall proceed with the work promptly when notified by the ENGINEER to resume operations.

C. No additional compensation shall be paid to the CONTRACTOR for such suspension under Paragraph 15.01A.6 above or otherwise where same is caused by the fault of the CONTRACTOR. Where such temporary suspension is not due to the fault of the CONTRACTOR, he shall be entitled to:

1. An equitable extension of working time for the completion of the Work, not to exceed the delay caused by such temporary suspension, as determined by the OWNER; and,
2. The actual and necessary costs of properly protecting the finished and partially finished Work, unused materials and uninstalled equipment during the period of the ordered suspension as determined by the OWNER as being beyond the contract requirements, such costs, if any, to be determined on the basis set forth in Article 12 of the General Conditions; and,
3. Where the CONTRACTOR elects to move equipment from the jobsite and then return it to the site when the Work is ordered resumed, the actual and necessary costs of these moves, in an amount determined by the OWNER under the provisions of Article 12 of the General Conditions.

SC-15.02.

Delete Paragraph 15.02 of the General Conditions in its entirety and replace with the following:

15.02 *Contractor Default: Owner's Right to Suspend Work and Annul Contract*

A. The Work or any portion of the Work under contract shall be suspended immediately on written order of the OWNER declaring the CONTRACTOR to be in default. A copy of such notice shall be served on the CONTRACTOR's Surety. The contract may be annulled by the OWNER for any good cause or causes, among others of which special reference is made to the following:

1. failure of the CONTRACTOR to start the Work within 10 days from the date specified in the written work order issued by OWNER to begin the Work;

2. substantial evidence that the progress of the work is being made by the CONTRACTOR is insufficient to complete the Work within the specified working time;
3. failure of the CONTRACTOR to provide sufficient and proper equipment, materials or construction forces for properly executing the Work;
4. substantial evidence that the CONTRACTOR has abandoned the work or discontinuance of the performance of the Work or any part thereof and failure to resume performance within a reasonable time after notice to do so;
5. substantial evidence that the CONTRACTOR has become insolvent or bankrupt, or otherwise financially unable to carry on the Work;
6. deliberate failure on the part of the CONTRACTOR to observe any requirements of these specifications or to comply with any orders given by ENGINEER as provided for in these specifications;
7. failure of the CONTRACTOR to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the OWNER;
8. substantial evidence of collusion or the purpose of illegally procuring a contract or perpetrating fraud on the OWNER in the construction of Work under contract;
9. repeated and flagrant violations of safe working procedures;
10. the filing by the CONTRACTOR of litigation against the OWNER prior to final completion of the Work.

B. When the work is suspended for any of the causes itemized above, or for any other cause or causes, the CONTRACTOR shall discontinue the Work or such part thereof as the OWNER shall designate, whereupon the Surety may either at its option assume the contract or that portion thereof which the OWNER has ordered the CONTRACTOR to discontinue and perform the same or, with the written consent of the OWNER, subcontract the same, provided, however, that the Surety shall exercise its option within two weeks after written notice to discontinue the work has been served upon the Contractor and upon the surety or its authorized agents. The Surety in such event shall assume the CONTRACTOR's place in all respects and shall be paid by the OWNER for all work performed by it in accordance with the terms of the contract, but in no event shall such payments exceed the contract amount, regardless of the cost to the Surety to complete the Work

All monies remaining due to the CONTRACTOR at the time of his default shall thereupon become due and payable to the Surety as the Work progresses, subject to all terms of the Contract. In case the Surety does not, within the hereinabove specified time, exercise its obligation to assume the contract or that portion thereof which the OWNER has ordered the CONTRACTOR to discontinue, then OWNER shall have the power to complete by contract or otherwise, as it may determine, the Work herein described or such part thereof as it may deem necessary, and the CONTRACTOR hereto agrees that the OWNER shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies and property of every kind provided by the CONTRACTOR for the purpose of his Work and to procure other tools, equipment and materials for the completion of the same and to charge the account of the CONTRACTOR the expense of said contract for labor, materials, tools, equipment and expenses incident thereto.

C. The OWNER shall not be required to obtain the lowest bid for the work of completing the contract, but the expenses to be deducted shall be the actual cost of such work. In case such expense is less than the sum which would have been payable under the contract if the same had been completed by CONTRACTOR, then in such case the OWNER may pay the CONTRACTOR the difference in the cost, provided that the CONTRACTOR shall not be entitled to any claim for damages or for loss of anticipated profits.

D. In case such expense shall exceed the amount which would have been payable under the contract if the same had been completed by the CONTRACTOR, the CONTRACTOR and his surety shall pay the amount of the excess to the OWNER on notice from the OWNER for excess due including any costs incurred by the OWNER, such as inspection, legal fees and liquidated damages. When any particular part of the work is being carried on by the OWNER by contract or otherwise under the provisions of this section, the CONTRACTOR shall continue the remainder of the work in conformity with the terms of the contract and in such a manner as not to hinder or interfere with the performance of workmen employed as above provided by the Owner or surety.

SC-15.03.

Delete Paragraph 15.03 of the General Conditions in its entirety and replace with the following:

15.03 Termination for Convenience of the Owner

A. The performance of the work under this contract may be terminated by the OWNER in whole or from time to time in part, in accordance with this section, whenever the OWNER shall determine that such termination is in the best interest of the OWNER. Any such termination shall be effected by mailing a notice of termination to the CONTRACTOR specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. Receipt of the notice shall be deemed conclusively presumed and established when the letter is placed in the United States Mail by the OWNER. Further, it shall be deemed conclusively presumed and established that such termination is made with just cause as therein stated, and no proof in any claim, demand, or suit shall be required of the OWNER regarding such discretionary action.

B. After receipt of a notice of termination, and except as otherwise directed by the ENGINEER, the CONTRACTOR shall:

1. stop work under the contract on the date and to the extent specified in the notice of termination;
2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under contract as is not terminated;
3. terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
4. transfer title to the OWNER and deliver in the manner, at the times, and to the extent, if any, directed by the ENGINEER:
  - a. the fabricated or unfabricated parts, work in progress, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the notice of termination; and,
  - b. the completed or partially completed plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to the OWNER.
5. complete performance of such part of the work as shall not have been terminated by the notice of termination; and
6. take such action as may be necessary, or as ENGINEER may direct, for the protection and preservation of the property related to its contract which is in the possession of the CONTRACTOR and in which the OWNER has or may acquire an interest. At a time not later than 30 days after the termination date specified in the notice of termination, the CONTRACTOR may submit to the ENGINEER a list, certified as to the quantity and quality, of any or all items of termination inventory not previously disposed of, exclusively of items the disposition of which has been directed or authorized by the ENGINEER. Not later than 15

days thereafter, the OWNER shall accept title to such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the ENGINEER upon removal of the items, or, if the items are stored, within 45 days from the date of submission of the list, and provided that any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

C. Within 60 days after written notice of termination, the CONTRACTOR shall submit his termination claim to the ENGINEER in the form and with the certification prescribed by the ENGINEER. Unless one or more extensions in writing are granted by the ENGINEER upon request of the CONTRACTOR, made in writing within such 60-day period or authorized extension thereof, any and all such claims shall be conclusively deemed waived.

D. Subject to the provisions of Paragraph 15.03C, the CONTRACTOR and OWNER may agree upon the whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of work pursuant thereto, provided that such agreed amount or amounts shall never exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the CONTRACTOR shall be paid the agreed amount. No amount shall be due for lost or anticipated profits. Nothing in Paragraph 15.03E, hereunder, prescribing the amount to be paid to the CONTRACTOR in the event of failure of the CONTRACTOR and the OWNER to agree upon the whole amount to be paid to the CONTRACTOR by reason of the termination of work pursuant to this section, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the CONTRACTOR pursuant to this paragraph.

E. In the event of the failure of the CONTRACTOR and the OWNER to agree, as provided in Paragraph 15.03D, upon the whole amount to be paid to the CONTRACTOR by reason of the termination of work pursuant to this section, the OWNER shall determine, on the basis of information available to it, the amount, if any, due the CONTRACTOR by reason of the termination and shall pay to the CONTRACTOR the amounts determined. No amount shall be due for lost or anticipated profits.

F. In arriving at the amount due the CONTRACTOR under this section, there shall be deducted:

1. all unliquidated advance or other payments on account theretofore made to the CONTRACTOR, applicable to the terminated portion of this contract;
2. any claim which the OWNER may have against the CONTRACTOR in connection with this contract; and
3. the agreed price for or the proceeds of sale of any materials, supplies or other things kept by the CONTRACTOR or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the OWNER.

G. If the termination hereunder may be partial prior to the settlement of the terminated portion of this contract, the CONTRACTOR may file with the ENGINEER a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; nothing contained herein, however, shall limit the right of the OWNER and the CONTRACTOR to agree upon the amount or amounts to be paid to the CONTRACTOR for the completion of the continued portion of the contract when said contract does not contain an established contract price for such continued portion.

H. Nothing contained in this section shall limit or alter the rights which the OWNER may have for termination of this contract under Paragraph 15.02 hereof entitled "CONTRACTOR default"

OWNER's Right to Suspend Work and Annul Contract" or any other right which OWNER may have for default or breach of contract by CONTRACTOR.

SC-15.04.

Delete Paragraph 15.04 of the General Conditions in its entirety.

#### ARTICLE 16 – DISPUTE RESOLUTION

SC-16.01.

Delete Paragraph 16.01 of the General Conditions in its entirety.

#### ARTICLE 17 – MISCELLANEOUS

SC-17.01A.

Amend Paragraph 17.01A by inserting the words "return receipt requested" after the words "certified mail" in line 6.

SC-17.02A.

Amend Paragraph 17.02A by removing "such day will be omitted from the computation" in line 6 and replace it with "then the last day of such period shall be the next working day."

SC-17.05.

Add a new paragraph after Paragraph 17.05 in the General Conditions which reads as follows:

B. Exclusive venue for any action under this Contract shall be a court of competent jurisdiction in \_\_\_\_\_ Pope County, Arkansas.

Add the new paragraphs immediately after Paragraph 17.05 of the General Conditions which is to read as follows:

#### 17.06 *Addresses*

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

#### 17.08 *No Waiver of Legal Rights*

A. Inspection by the ENGINEER; any order, measurement, quantity or certificate by the ENGINEER; any order by the OWNER for payment of money; any payment for or acceptance of any work; or any extension of time or any possession taken by the OWNER shall not operate as a waiver of any provisions of the contract or any power therein reserved to the OWNER of any rights or damages therein provided. Any waiver of any breach of contract shall not be held to be a waiver of any other or subsequent breach. The OWNER reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the contract documents. The OWNER reserves the right to recover by process of law sums as may be sufficient to correct any error or make good any deficiency in the work resulting from such error, dishonesty or collusion by the CONTRACTOR or his agents and the ENGINEER or his assistants, discovered in the work after the final payment has been made. Neither final acceptance of the work nor final payment shall relieve the CONTRACTOR of responsibility for faulty materials or workmanship, and the CONTRACTOR shall promptly remedy any defects due thereto and pay for any damage to other work resulting therefrom. Likewise, neither final acceptance nor final payment, nor partial or entire use of occupancy of the work by the OWNER shall constitute acceptance of work not done in accordance with the contract documents or relieve CONTRACTOR of liability with respect to any expressed or implied warranties or responsibility for faulty materials or workmanship, whether same be patently or latently defective.

#### 17.09 Equal Employment Opportunity

A. During the performance of this contract the CONTRACTOR agrees as follows:

1. CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. The CONTRACTOR shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants shall received consideration for employment without regard to race, color, religion, sex, national origin or age.

3. CONTRACTOR shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contact or understanding a notice to be provided, advising the said labor union or worker's representatives of the CONTRACTOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. CONTRACTOR shall include the provisions of this section in all subcontracts pertaining to the work.

5. During the course of the work, the CONTRACTOR shall submit to the ENGINEER, on a monthly basis, a breakdown by minority group of all employees at the site of the work.

#### 17.10 Loss of Anticipated Profits

A. Contractor will not be entitled to loss of anticipated profits pursuant to any claim under this Agreement.

#### 17.11 Obligation to Perform Functions

A. Any failure or neglect on the part of OWNER, ENGINEER or inspectors to enforce provisions herein dealing with supervision, control, inspection, testing or acceptance and approval of the work shall never operate to relieve CONTRACTOR from full compliance with the contract documents nor render OWNER liable to CONTRACTOR for money damages, extensions of time or increased compensation of any kind.

## PART II – STATE GOVERNMENT PROVISIONS

State Government Provisions included herein have been selected from those to which specific references have been made elsewhere in the Contract Documents. Each and every other provision of law or clause required by law to be inserted in this Contract shall be deemed to be also inserted herein in accordance with Paragraph 3.01D of the Supplementary Conditions.

SECTION 00840  
NOTICE OF AWARD

Dated: \_\_\_\_\_, 20\_\_\_\_

TO: \_\_\_\_\_(Bidder)

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OWNER'S PROJECT NO.: \_\_\_\_\_

PROJECT: \_\_\_\_\_

\_\_\_\_\_

You are notified that your Bid dated \_\_\_\_\_, 20\_\_\_\_ for the above Project has been accepted. You are the apparent successful Bidder and have been awarded a contract for

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

The Contract Price of your Contract is

\_\_\_\_\_

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_).

Three (3) copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award. Three (3) sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within ten (10) days of the date of this Notice of Award, that is by:

\_\_\_\_\_, 20\_\_\_\_\_.

1. You must deliver to the OWNER three (3) fully executed counterparts of the Agreement.
2. You must deliver with the executed Agreement three (3) fully executed copies of the Performance and Payment Bonds.

Failure to comply with these conditions within the time specified will entitle Owner to consider your bid abandoned, to annul this Notice of Award and to declare your Bid Security forfeited.

Within ten (10) days after you comply with those conditions, Owner will return to you one sully signed counterpart of the Agreement with the Contract Documents attached.

\_\_\_\_\_  
(Owner)

BY: \_\_\_\_\_  
(Authorized Signature)

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

END OF SECTION 00840

SECTION 00845  
NOTICE TO PROCEED

Dated: \_\_\_\_\_, 20\_\_\_\_\_

TO: \_\_\_\_\_ (Bidder)

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OWNER'S PROJECT NO.: \_\_\_\_\_

PROJECT: \_\_\_\_\_

OWNER'S CONTRACT NO.: \_\_\_\_\_

CONTRACT FOR: \_\_\_\_\_

You are notified that the Contract Time under the above Contract will commence to run on \_\_\_\_\_, 20\_\_\_\_\_. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 3 of the Agreement, the dates of Substantial Completion and Final Completion are \_\_\_\_\_, 20\_\_\_\_\_ and \_\_\_\_\_, 20\_\_\_\_\_, respectively.

Before you start any Work at the site, Paragraph 2.7 of the General Conditions provides that you must deliver to the Owner Certificates of Insurance which you are required to purchase and maintain in accordance with the Contract Documents.

ACKNOWLEDGE RECEIPT

\_\_\_\_\_

(Contractor)

\_\_\_\_\_

(Owner)

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

(Authorized Signature)

\_\_\_\_\_

(Authorized Signature)

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Title)

END OF SECTION 00845

SECTION 01000  
GENERAL REQUIREMENTS AND PROCEDURES

PART 1 – GENERAL

1.01 WORK INCLUDED

- A. These Specifications are written in imperative and abbreviated form. The imperative language is directed at the Contractor, unless specifically noted otherwise. Incomplete sentences shall be completed by inserting “shall”, the “Contractor shall”, “shall be” and similarly mandatory phrases by inference in the same manner as they are applied to noted on the Drawings. The words “shall be:” shall be supplied by inference where a colon (:) is used within sentences or phrases. Except as worded to the contrary, all indicated requirements shall be performed whether stated imperatively or otherwise.

1.02 DEFINITIONS

- A. Engineer: Brown Engineers, LLC, 17200 Chenal Pkwy. Suite 300 PMB 324, Little Rock, AR 72223.
- B. Provide: Furnish and install, complete in place, operating, testing and approved.
- C. Products: The materials, systems, and equipment provided by the Contractor.

1.03 SUBSTITUTIONS

- A. Prebid: Refer to Section 00100.
- B. Postbid: Refer to Section 00700.

END OF SECTION 01000

## SECTION 01045

### DEMOLITION, CUTTING AND PATCHING

#### PART 1 GENERAL

##### 1.01 SCOPE OF WORK

- A. This Section includes the removal of existing construction to the limits as indicated and specified. It also includes relocating existing construction as indicated and specified. Contractor shall comply with the requirements of Section 01310 in scheduling and completing all demolition Work.
- B. Demolition includes the complete or partial removal and turnover to Owner, salvage or disposal of equipment and materials as indicated or specified.
- C. Relocation of existing construction includes isolation, draining, cutting, joining, new piping, new fittings, new junction boxes, new conduit, new wiring, etc. as required to reinstall a fully functional system as indicated, as specified or as required to complete the new Work.
- D. Contractor shall be responsible for all demolition cutting, core drilling, fitting and patching, including attendant excavation and backfill, required to complete the Work to:
  - 1. Make its several parts fit together properly.
  - 2. Uncover portions of the work to provide for installation of ill-timed Work.
  - 3. Remove and replace defective Work.
  - 4. Remove and replace work not conforming to requirements of Contract Documents.
  - 5. Remove samples of installed work as specified for testing.
  - 6. Provide penetrations of structural and nonstructural surfaces for installation of piping and electrical conduit.

##### 1.02 SUBMITTALS

- A. Schedule: Submit proposed methods and operations of demolition, cutting and patching in accordance with Section 01300 and Section 01310.
- B. The schedule shall include:
  - 1. Identification of the Project.
  - 2. Description of the affected Work.
  - 3. The necessity for cutting, alteration or excavation, when applicable.
  - 4. The effect on the Work of the Owner or any separate contractor, or on the structural or weatherproof integrity of the Project.
  - 5. Coordination schedule for shut-off, capping and continuation of utility services as required.

6. Description of the proposed Work:
    - a. The scope and detailed sequence of cutting, patching, alteration or excavation.
    - b. The trades who will execute the Work.
    - c. Products proposed to be used.
    - d. The extent of refinishing to be done.
    - e. Sequence and methods of removal and disposal of demolished materials.
  7. Alternatives to cutting and patching, when applicable.
  8. Written permission of any separate contractor whose Work will be affected.
- C. Submit a written notice to the Owner designating the date and time the Work will begin.

1.03 JOB CONDITIONS

- A. Condition of Structures: Owner assumes no responsibility for actual condition of equipment and portions of structures to be demolished. Conditions existing at time of inspection for bidding purposes will be maintained by Owner insofar as practicable.
- B. Explosives: Use of explosives will not be permitted.
- C. Protections: Ensure safe passage of persons around area of demolition. Conduct operations to prevent injury to adjacent buildings, structures, other facilities, and persons.
  1. The interior of the building and all materials and equipment shall be protected from the weather at all times.
  2. Provide interior and exterior shoring, bracing, or support to prevent movement or collapse of facilities adjacent to structures to be demolished.
  3. Provide interior and exterior shoring, bracing, or support to prevent movement or collapse of structures to be demolished.
- D. Damages: Promptly repair damages caused to adjacent facilities by demolition operations at no cost to Owner.
- E. Utility Services: Maintain existing utilities required to remain, keep in service, and protect against damage during demolition operations.
  1. Do not interrupt existing utilities serving occupied or used facilities, except when authorized in writing by the Owner. Provide temporary services during interruptions to existing utilities, as acceptable to the Owner.
  2. When utility lines are encountered which are not indicated in the Drawings, the Owner shall be notified.
- F. Operating Facilities
  1. Perform Work in a manner which will not disrupt the operation of existing utilities.

2. Provide temporary services to assure uninterrupted operation of existing facilities, except where service disruption is allowed for as specifically specified in Section 01310 or specifically noted on the Drawings.
3. Stage materials, equipment and Work in a manner which will not obstruct Owner access to operate and maintain existing operating facility components.
4. Sequence and perform Work to minimize disruption of existing facilities.

## PART 2 PRODUCTS

- A. Comply with Specifications and standards for each specific product involved.

## PART 3 EXECUTION

### 3.01 INSPECTION

- A. Inspect existing conditions of the Project, including elements subject to damage or to movement during demolition, cutting, patching, splicing or relocation.
- B. After uncovering Work, inspect the conditions affecting the installation of products or performance of the Work.
- C. Report unsatisfactory or questionable conditions to the Owner in writing; do not proceed with the Work until the Owner has provided further instructions.
- D. Conditions which are visible without uncovering Work shall be reported to the Owner in writing no later than 2 weeks after site mobilization.
- E. Test equipment for proper function after relocation.
- F. The Contractor shall be liable for any lost or damaged items which are to be reused. Any lost or damaged items shall be replaced with products identical to the existing items or equivalent as determined by the Owner. The Owner shall have sole discretion in determining what product is equivalent.

### 3.02 PREPARATION

- A. Provide adequate temporary support as necessary to assure the structural value or integrity of the affected portion of the Work.
- B. Provide devices and methods to protect other portions of the Project from damage.
- C. Provide protection from the elements for that portion of the Project which may be exposed by demolition, cutting and patching work, and maintain excavations free from water.

### 3.03 PERFORMANCE

- A. Pollution Controls: Use water sprinkling, temporary enclosures, and other suitable methods to limit dust and dirt rising and scattering in air to lowest practical level. Comply with governing regulations pertaining to environmental protection.

1. Do not use water when it may create hazardous or objectionable conditions such as ice, flooding, and pollution.
  2. Clean adjacent structures and improvements of dust, dirt, and debris caused by demolition operations, as directed by the Owner or governing authorities. Return adjacent areas to condition existing prior to start of Work as soon as practical.
  3. Prior to demolition inside existing structures, provide covers consisting of plastic sheeting and framing over existing equipment, motors, switchgear and control panels. Maintain covers during demolition operations.
- B. Structure demolition: Demolish as required and remove from Site. Use such methods as required to complete Work within limitations of governing regulations.
1. Proceed with demolition in a systematic manner, from top to ground.
  2. Locate demolition equipment throughout structure and remove materials so as to not expose excessive loads to supporting walls, floors or framing.
  3. Execute cutting and demolition by methods which will prevent damage to other Work, and will provide proper surfaces to receive installation of repairs. Torch cutting will not be permitted.
  4. Where physical cutting is required, cut Work with sawing and grinding tools, not with hammering and chopping tools. Unless otherwise specified, core drill or saw cut openings through all concrete work. Core drilling shall be done utilizing diamond bits. Corners shall not be over cut without prior written approval from the Owner.
  5. Torch cutting of steel members is not allowed.
- C. Execute excavating and backfilling by methods which will prevent settlement or damage to other Work.
- D. Execute filling and adjustment of products to provide a finished installation to comply with specified products, functions, tolerances and finishes.
- E. Fit work watertight and airtight to pipes, sleeves, ducts, conduit and other penetrations through surfaces.
- F. Patch with seams which are durable and as invisible as possible. Restore exposed finishes of patched areas and, where necessary, extend finish restoration onto retained Work, adjoining in a manner which will eliminate evidence of patching.
- G. Take care in the removal of equipment and materials to be salvaged to prevent damage to such.
- H. The Owner is responsible for asbestos abatement. Contractor shall notify the Owner immediately upon encountering asbestos during demolition Work.

#### 3.04 DISPOSAL OF DEMOLISHED MATERIALS

- A. The Owner will retain salvage rights to all material and equipment. All materials and equipment retained by the Owner shall be transported and delivered to a point designated by the Owner. All equipment to be salvaged by the Owner shall receive a general cleaning to rid all excessive and foreign materials that may have grown attached to the equipment.
- B. Any material or equipment not retained by the Owner shall be removed from the Site and disposed of by the Contractor in accordance with applicable regulations and laws.

END OF SECTION

## SECTION 01150

### MEASUREMENT AND PAYMENT

#### PART 1 GENERAL

##### 1.01 PROPOSAL

- A. The Bid Form is a part of these Contract Documents and lists each item of Work for which payment will be made. No payment will be made for items other than those listed in the Bid Form.
- B. Required items of Work and incidentals necessary for the satisfactory completion of the Contract which are not specifically listed in the Bid Form and which are not specified in this Section to be measured or to be included in one of the items listed in the Bid Form shall be considered as incidental to the Work required under this Contract, and all costs thereof, including Contractor's overhead costs and profit, shall be considered as included in the prices bid for the various bid items. The Contractor shall prepare his proposal accordingly.
- C. Work includes furnishing all labor, equipment, tools, and materials, and performing all operations required to complete the Work of this Contract satisfactorily, in place, as specified and as indicated on the Drawings.

##### 1.02 UNIT PRICES

- A. Unit prices are requested in the Bid Form for certain items. The estimated quantities set forth in the Bid Form for these items have been fixed for the purpose of comparison of bids.

##### 1.03 MEASUREMENT AND PAYMENT

- A. Measurement of an item of Work will be by the unit indicated in the Bid Form. On lump sum items, monthly progress pay quantities will be based on percentage of acceptable project in place.
- B. Unless otherwise stated in individual sections of the Specifications or on the Bid Form, no separate payment will be made for any incidental items of Work, materials, parts, equipment, supplies, or related items required to perform and complete the requirements of any Bid Item. The costs for such incidentals required shall be included in the Contract price bid for each Bid Item.
- C. Payment will be made at the Contract price per unit as indicated in the Bid Form with total price of the Contract being equal to the Total Bid, as specified and as modified, by extending unit prices multiplied by quantities, as appropriate to reflect actual Work included in the Contract. Such price and payment shall constitute full compensation to the Contractor for furnishing all plant, labor, equipment, tools, and materials, and for performing all operations required to furnish to the Owner the entire Work of this Contract, complete in place, as specified and as indicated on the Drawings.
- D. Measurement for payment does not signify acceptance of Work.

1.04 BID ITEMS

A. Each bid item shall be as follows:

1. Bid Item 1 – All supervision, labor, materials, tools, equipment, incidentals and related items required for construction of the Tucker Coliseum Mechanical Room Phase 1 HVAC Renovation

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

END OF SECTION

## SECTION 01200

### PROJECT MEETINGS

#### PART 1 GENERAL

##### 1.01 SCOPE OF WORK

- A. Schedule, attend, and administer as specified, preconstruction conference, periodic progress meetings, and specially called meetings throughout the process of the Work.
- B. Representatives of Contractor, subcontractors and suppliers attending meetings shall be qualified and authorized to act on behalf of the entity each represents.
- C. Meetings administered by Owner may be tape recorded. If recorded, tapes will be used to prepare minutes and retained by Owner for future reference.
- D. Meetings, in addition to those specified in this Section, may be held when requested by the Owner, Engineer or Contractor.

##### 1.02 RELATED WORK

- A. A preconstruction conference will be held within ten days after award of Contract and before Work is started. The conference will be scheduled and administered by the Construction Manager.
- B. The Construction Manager will preside at the conference, prepare the minutes of the meeting and distribute copies of same to all participant who so request by fully completing the attendance forms to be circulated at the beginning of the conference.
- C. Attendance:
  - 1. Contractor's project manager.
  - 2. Contractor's superintendent.
  - 3. Any subcontractor or supplier representatives whom the Contractor may desire to invite or the Owner may request.
  - 4. Construction Manager.
  - 5. Engineer's representatives.
  - 6. Owner's representatives.
  - 7. Others as appropriate.
- D. Preliminary Agenda:
  - Introductions

1. Schedule completion dates and Liquidated Damages.
2. Construction Scheduling, including critical path.
3. Designation of responsible personnel.
4. Authority of Contractor.
5. Authority of Construction Manager and Engineer.
6. Submittals.
7. Procedures for Change Orders, CMRs, PCMs, Field Orders, RFIs, etc.
8. Record Drawings.
9. Quality Control.
10. Safety Procedures.
11. Temporary construction facilities.
12. Use of Campus facilities.
13. Security and Work after Normal Hours.
14. Measurement and payment.
15. Campus administrative procedures, including M/WBE procedures.
16. Project Work Summary.
17. Correspondence Routing.
18. Pay Request procedures.

#### 1.04 PROGRESS MEETINGS

- A. Formal project coordination meetings will be held periodically (not more than once weekly, nor less than once monthly). Meetings will be scheduled and administered by Construction Manager. Additional progress meetings to discuss specific topics will be conducted on an as-needed basis. Such additional meetings shall include, but not be limited to:
  1. Coordinating plant/equipment shutdowns.
  2. Installation of equipment.
  3. Start-up of equipment or plant.
  4. Problem Area Resolutions.
  5. Equipment approval.

- B. The Construction Manager will preside at progress meetings, prepare the minutes of the meeting and distribute copies of same to all participants who so request by fully completing the attendance form to be circulated at the beginning of each meeting.
- C. Attendance: Same as preconstruction conference.
- D. Preliminary Agenda:
  - 1. Review, approval of minutes of previous meeting.
  - 2. Review of work progress since previous meeting.
  - 3. Field observations, problems, conflicts.
  - 4. Problems which impede construction schedule.
  - 5. Review of off-site fabrication, delivery schedules.
  - 6. Review of construction interfacing and sequencing requirements with other construction contracts.
  - 7. Corrective measures and procedures to regain projected schedule.
  - 8. Revisions to construction schedule.
  - 9. Progress, schedule, during succeeding work period.
  - 10. Coordination of schedules.
  - 11. Review submittal schedules.
  - 12. Maintenance of quality standards.
  - 13. Pending changes and substitutions.
  - 14. Review proposed changes for:
    - a. Effect on construction schedule and on completion date.
    - b. Effect on other contracts of the Project.
  - 15. Review Record Documents.
  - 16. Review monthly pay request.
  - 17. Review status of RFIs.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

END OF SECTION

## SECTION 01300

### SUBMITTALS

#### PART 1 GENERAL

##### 1.01 DESCRIPTION OF REQUIREMENTS

- A. This Section specifies the general methods and requirements of submissions applicable to Shop Drawings, Product Data, Samples, and Construction or Submittal Schedules. Additional general submission requirements are contained in Article 6.17 of the General Conditions. Detailed submittal requirements are specified in the technical sections.
- B. All submittals shall be clearly identified by reference to Section Number, Paragraph, Drawing Number or Detail as applicable. Submittals shall be clear and legible and of sufficient size for presentation of data.

##### 1.02 SHOP DRAWINGS, PRODUCT DATA, SAMPLES

###### A. Shop Drawings

1. Shop drawings as specified in individual Sections include, custom-prepared data such as fabrication and erection/installation (working) drawings, scheduled information, setting diagrams, actual shop work manufacturing instructions, custom templates, special wiring diagrams, coordination drawings, individual system or equipment inspection and test reports including performance curves and certifications, as applicable to the work.
2. All shop drawings submitted by subcontractors shall be sent directly to the Contractor for checking. The Contractor shall be responsible for their submission at the proper time so as to prevent delays in delivery of materials.
3. Check all subcontractor's shop drawings regarding measurements, size of members, materials and details to make sure that they conform to the intent of the Drawings and related Sections. Return shop drawings found to be inaccurate or otherwise in error to the subcontractors for correction before submission thereof.
4. All details on shop drawings shall show clearly the relation of the various parts to the main members and lines of the structure and where correct fabrication of the work depends upon field measurements, such measurements shall be made and noted on the drawings before being submitted.
5. Submittals for equipment specified under Divisions 11, and 16 shall include a listing of all installations where identical or similar equipment has been installed and been in operation for a period of at least one year.

###### B. Product Data

1. Product data as specified in individual Sections include, standard prepared data for manufactured products (sometimes referred to as catalog data), such as the manufacturer's product specification and installation instructions, availability of colors and patterns, manufacturer's printed statements of compliances and applicability, roughing-in diagrams

and templates, catalog cuts, product photographs, standard wiring diagrams, printed performance curves and operational-range diagrams, production or quality control inspection and test reports and certifications, mill reports, product operating and maintenance instructions and recommended spare-parts listing and printed product warranties, as applicable to the work.

C. Samples

1. Samples specified in individual Sections include, physical examples of the work such as sections of manufactured or fabricated work, small cuts or containers of materials, complete units of repetitively-used products, color/texture/pattern swatches and range sets, specimens for coordination of visual effect, graphic symbols and units of work to be used by the Engineer or Owner for independent inspection and testing, as applicable to the work.

1.03 CONTRACTOR'S RESPONSIBILITIES

- A. Review shop drawings, product data and samples, including those by subcontractors, prior to submission to determine and verify the following:
  1. Equipment (or field) measurements
  2. Equipment (or field) construction criteria
  3. Catalog numbers and similar data
  4. Conformance with related Sections
- B. Each shop drawing, sample and product data submitted by the Contractor shall have affixed to it the following Certification Statement including the Contractor's Company name and signed by the Contractor: "Certification Statement: by this submittal, I hereby represent that I have determined and verified all equipment (or field) measurements, equipment (or field) construction criteria, materials, dimensions, catalog numbers and similar data and I have checked and coordinated each item with other applicable approved shop drawings and all Contract requirements." Shop drawings and product data sheets 11-in x 17-in and smaller shall be bound together in an orderly fashion and bear the above Certification Statement on the cover sheet. The cover sheet shall fully describe the packaged data and include a listing of all items within the package. Provide to the Resident Project Representative a copy of each transmittal sheet for shop drawings, product data and samples at the time of submittal to the Engineer.
- C. The Contractor shall utilize a 10-character submittal identification numbering system in the following manner:
  1. The first character shall be a D, S, P or M which represents Shop/Working Drawing and other Product Data (D), Sample (S), Preliminary Submittal (P) or Operating/ Maintenance Manual (M).
  2. The next five digits shall be the applicable Section Number.
  3. The next three digits shall be the numbers 001 to 999 to sequentially number each initial separate item or drawing submitted under each specific Section Number.

4. The last character shall be a letter, A to Z, indicating the submission, or resubmission of the same Drawing, i.e., "A=1st submission, B=2nd submission, C=3rd submission, etc. A typical submittal number would be as follows:

D-03300-008-B

- D. = Shop Drawing
- 03300 = Section for Concrete
- 008 = The eighth initial submittal under this section
- B. = The second submission (first resubmission) of that particular shop drawing]

- D. Notify the Engineer in writing, at the time of submittal, of any deviations in the submittals from the requirements of the Contract Documents.
- E. The review and approval of shop drawings, samples or product data by the Engineer shall not relieve the Contractor from the responsibility for the fulfillment of the terms of the Contract. All risks of error and omission are assumed by the Contractor and the Engineer will have no responsibility therefor.
- F. No portion of the work requiring a shop drawing, sample, or product data shall be started nor shall any materials be fabricated prior to the approval or qualified approval of such item. Fabrication performed or materials purchased accomplished which does not conform to approved shop drawings and data shall be at the Contractor's risk. The Owner will not be liable for any expense or delay due to corrections or remedies required to accomplish conformity.
- G. Project work, materials, and fabrication shall conform with approved shop drawings, applicable samples, and product data.

1.04 SUBMISSION REQUIREMENTS

- A. Make submittals promptly in accordance with approved schedule and in such sequence as to cause no delay in the Work or in the work of any other contractor.
- B. Each submittal, appropriately coded, will be returned within 15 calendar days following receipt of submittal by the Engineer. Except as noted below:
  1. Contractor shall allow 30 calendar days following receipt of submittal by the Engineer for Section 11093 and Section 16450.
- C. Number of submittals required:
  1. Shop Drawings: Electronic as pdf (preferred) or six (6) hard copies in binders.
  2. Product Data: Electronic as pdf (preferred) or three (3) hard copies in binders.
  3. Samples: Submit the number stated in the respective Sections.
- D. Submittals shall contain:
  1. The date of submission and the dates of any previous submissions.
  2. The Project title and number.

3. Contractor identification.
4. The names of:
  - a. Contractor
  - b. Supplier
  - c. Manufacturer
5. Identification of the product, with the section number, page and paragraph(s).
6. Equipment (or field) dimensions, clearly identified as such.
7. Relation to adjacent or critical features of the work or materials.
8. Applicable standards, such as ASTM or Federal Standards numbers.
9. Identification of deviations from Contract Documents.
10. Identification of revisions on resubmittals.
11. An 8-in by 3-in blank space for Contractor and Engineer stamps.
12. Where calculations are required to be submitted by the Contractor, the calculations shall have been checked by a qualified individual other than the preparer. The submitted calculations shall clearly show the names of the preparer and of the checker.

1.05 REVIEW OF SHOP DRAWINGS, PRODUCT DATA, WORKING DRAWINGS AND SAMPLES

- A. The review of shop drawings, data and samples will be for general conformance with the design concept and Contract Documents. They shall not be construed:
  1. as permitting any departure from the Contract requirements;
  2. as relieving the Contractor of responsibility for any errors, including details, dimensions, and materials;
  3. as approving departures from details furnished by the Engineer, except as otherwise provided herein.
- B. The Contractor remains responsible for details and accuracy, for coordinating the work with all other associated work and trades, for selecting fabrication processes, for techniques of assembly, and for performing work in a safe manner.
- C. If the shop drawings, data or samples as submitted describe variations and show a departure from the Contract requirements which Engineer finds to be in the interest of the Owner and to be so minor as not to involve a change in Contract Price or Contract Time, the Engineer may return the reviewed drawings without noting an exception.

D. Submittals will be returned to the Contractor under one of the following codes.

Code 1 - "APPROVED" is assigned when there are no notations or comments on the submittal. When returned under this code the Contractor may release the equipment and/or material for manufacture.

Code 2 - "APPROVED AS NOTED" - This code is assigned when a confirmation of the notations and comments IS NOT required by the Contractor. The Contractor may release the equipment or material for manufacture; however, all notations and comments must be incorporated into the final product.

Code 3 - "APPROVED AS NOTED/CONFIRM" - This combination of codes is assigned when a confirmation of the notations and comments IS required by the Contractor. The Contractor may, at his own risk, release the equipment or material for manufacture; however, all notations and comments must be incorporated into the final product. This confirmation shall specifically address each omission and nonconforming item that was noted. Confirmation is to be received by the Engineer within 10 calendar days of the date of the Engineer's transmittal requiring the confirmation.

Code 4 - "APPROVED AS NOTED/RESUBMIT" - This combination of codes is assigned when notations and comments are extensive enough to require a resubmittal of the package. This resubmittal is to address all comments, omissions and non-conforming items that were noted. Resubmittal is to be received by the Engineer within 15 calendar days of the date of the Engineer's transmittal requiring the resubmittal.

Code 5 - "NOT APPROVED" is assigned when the submittal does not meet the intent of the Contract Documents. The Contractor must resubmit the entire package revised to bring the submittal into conformance. It may be necessary to resubmit using a different manufacturer/vendor to meet the Contract Documents.

Code 6 - "COMMENTS ATTACHED" is assigned where there are comments attached to the returned submittal which provide additional data to aid the Contractor.

Code 7 - "RECEIPT ACKNOWLEDGED" - This code is assigned to acknowledge receipt of a submittal that is not subject to the Engineer's review and approval; and, is being filed for informational purposes only. This code is generally used in acknowledging receipt of *means and methods of construction* work plan, field conformance test reports, and Health and Safety plans.

Codes 1 through 5 designate the status of the reviewed submittal with Code 6 showing there has been an attachment of additional data.

E. Resubmittals will be handled in the same manner as first submittals. On resubmittals the Contractor shall identify all revisions made to the submittals, either in writing on the letter of transmittal or on the shop drawings by use of revision triangles or other similar methods. The resubmittal shall clearly respond to each comment made by the Engineer on the previous submission. Additionally, the Contractor shall direct specific attention to any revisions made other than the corrections requested by the Engineer on previous submissions.

- F. Partial submittals may not be reviewed. The Engineer will be the only judge as to the completeness of a submittal. Submittals not complete will be returned to the Contractor and will be considered "Not Approved" until resubmitted. The Engineer may at his option provide a list or mark the submittal directing the Contractor to the areas that are incomplete.
- G. Repetitive Review
  - 1. Shop drawings and other submittals will be reviewed no more than twice at the Owner's expense. All subsequent reviews will be performed at times convenient to the Engineer and at the Contractor's expense, based on the Engineer's then prevailing rates. The Contractor shall reimburse the Owner for all such fees invoiced to the Owner by the Engineer. Submittals are required until approved.
  - 2. Any need for more than one resubmission, or any other delay in obtaining Engineer's review of submittals, will not entitle Contractor to extension of the Contract Time.
- H. If the Contractor considers any correction indicated on the shop drawings to constitute a change to the Contract Documents, the Contractor shall give written notice thereof to the Engineer at least 7 working days prior to release for manufacture.
- I. When the shop drawings have been completed to the satisfaction of the Engineer, the Contractor shall carry out the manufacture of products in accordance therewith and shall make no further changes therein except upon written instructions from the Engineer.

#### 1.06 DISTRIBUTION

- A. Distribute reproductions of approved shop drawings and copies of approved product data and samples, where required, to the job site file and elsewhere as directed by the Engineer. Number of copies shall be as directed by the Engineer but shall not exceed six.

#### 1.07 CONSTRUCTION SCHEDULE

- A. The Contractor shall, within 15 days after the Notice to Proceed to provide and submit to the Engineer for approval, the Schedule he plans to maintain in order to successfully construct the work within the time allotted. The Contractor shall coordinate that products are manufactured and delivered to the construction site so that work can be constructed within the time allotted. The Contractor's Schedule shall include a Critical Path Network and a Computer generated print-out. The Schedule shall account for all Installation Contract work in addition to the work of the Contractor. In addition to all reasonably important construction activities, the Schedule shall provide for the proper sequence of construction considering the various crafts, purchasing time, submittal approval, material delivery, equipment fabrication, and similar time consuming factors.
- B. The Schedule shall include as a minimum, the earliest starting and finish dates, latest starting and finish dates, and the total float for each task or item. The Contractor shall update (monitor) and rerun the Schedule at least monthly and shall submit to the Engineer the Network and Computer print-out, both in duplicate, at the same time the pay estimate is prepared. The Schedule shall contain all of the items of the Periodic Estimate and Pay Schedule. The Contractor shall prepare schedule updates for products specified and supplied in the Contract such that the

C. The monthly Schedule update (monitoring) shall include the following items:

1. Network

- a. Identify activities that are completed or in process by contrasting heavy lines. Each activity worked on should be proportional to the percentage of progress achieved to date.
- b. Identify restraints imposed by material deliveries, precedent activity durations or schedule adjustments on the monthly update of the Network.

2. Computer Print-out

- a. Show the percentage progress status of each activity. The percentage progress status will be used to support each Contractor's periodic pay estimate.
- b. Show actual start and completion dates.
- c. Flag all activities started and in progress.

D. Supplemental to the Critical Path Schedule, the Contractor shall provide a detailed work schedule, projected at least a month in advance. The implementation of the work schedule and the coordination required will constitute the basic agenda of the coordination and planning meetings.

1.08 PROFESSIONAL ENGINEER (P.E.) CERTIFICATION FORM

- A. If specifically required in other related Sections, submit a State of Arkansas P.E. Certification for each item required, in the form attached to this Section, completely filled in and stamped.

1.09 GENERAL PROCEDURES FOR SUBMITTALS

- A. Coordination of Submittal Times: Prepare and transmit each submittal sufficiently in advance of performing the related work or other applicable activities, or within the time specified in the individual work of other related Sections, so that the installation will not be delayed by processing times including disapproval and resubmittal (if required), coordination with other submittals, testing, purchasing, fabrication, delivery and similar sequenced activities. No extension of time will be authorized because of the Contractor's failure to transmit submittals sufficiently in advance of the Work.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

END OF SECTION

P.E. CERTIFICATION FORM

The undersigned hereby certifies that he/she is a professional engineer registered in the State of Arkansas and that he/she has been employed by

\_\_\_\_\_ to design  
(Name of Contractor)

\_\_\_\_\_  
(Insert P.E. Responsibilities)

in accordance with Section \_\_\_\_\_ for the  
\_\_\_\_\_  
(Name of Project)

The undersigned further certifies that he/she has performed the design of the \_\_\_\_\_  
\_\_\_\_\_, that said design is in conformance  
(Name of Project)

with all applicable local, state and federal codes, rules, and regulations, and that his/her signature and P.E. stamp have been affixed to all calculations and drawings used in, and resulting from, the design.

The undersigned hereby agrees to make all original design drawings and calculations available to the  
\_\_\_\_\_  
(Insert Name of Owner)

or Owner's representative within seven days following written request therefor by the Owner.

\_\_\_\_\_  
P.E. Name

\_\_\_\_\_  
Contractor's Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

## SECTION 01370

### SCHEDULE OF VALUES

#### PART 1 GENERAL

##### 1.01 SCOPE OF WORK

- A. Within 10 days of the date of Notice to Proceed, the Contractor shall submit to the Owner or Owner's Designated Agent in triplicate a tentative schedule of values (a breakdown of the bid) for the purpose of developing a Schedule of Values, which in turn shall be used to determine partial pay estimates and may be used to verify costs of credits, change orders, etc.
1. The tentative schedule of values will be reviewed by the Owner or Owner's Designated Agent to determine whether, in his judgment, it is sufficiently detailed for the purpose intended. The Owner or Owner's Designated Agent will also evaluate the schedule to determine whether, in his judgment, the prices included are "unbalanced" or "front-end loaded," in an effort to inflate the prices of those items of Work to be completed in the early stages of the Work.
  2. The Owner or Owner's Designated Agent will provide the Contractor with his comments and may request additional information from the Contractor to justify certain item quantities and prices. On the basis of the comments by the Owner or Owner's Designated Agent, the Contractor shall revise and resubmit the tentative schedule of values for further review and approval.
  3. Once the tentative schedule is approved by the Owner or Owner's Designated Agent, it shall become the Schedule of Values to be used in determining partial payment estimates. Twenty copies of this Schedule of Values shall be submitted to the Owner or Owner's Designated Agent for distribution and his use.
  4. No partial payment request (including the first) will be approved until the Schedule of Values has been approved by the Owner or Owner's Designated Agent.
- B. In so far as possible, total quantities and unit prices shall be shown for all items of Work, separating for each item the materials and labor and such other sub-items as the Contractor may desire. "Lump sum," "miscellaneous," and other such general entries in the schedule shall be avoided whenever possible.
- C. Such items as Bond premiums, insurance, temporary facilities, and equipment storage may be listed separately in the Schedule of Values, provided the costs can be substantiated. Overhead and profit shall not be listed as separate items.
- D. Each item of Work that has an installed value of more than \$5,000 shall be listed in the Schedule of Values.
- E. The value for mobilization shall not exceed 3 percent of the Contract Price.
- F. The sum of the prices of the items listed in the Schedule of Values shall equal the Contract Price. No additional payment will be allowed if the quantities shown on the Schedule of Values are less than those actually required to accomplish the Work, unless the quantities are altered by a Change Order.

- G. Each partial payment request by the Contractor shall include the approved Schedule of Values, modified to indicate the total quantity and price of Work completed to the date of the request.
- H. The approved Schedule of Values will also be used as a guide in determining the value of work involved in change orders.
- I. It is the Owner's intent that the Schedule of Values can also be used as a fair and expedient method of deleting items from the Work, should the Owner so desire. Therefore, it is the Contractor's responsibility, as well as to his advantage, to make the schedule as detailed and the items and their corresponding values as equitably determined and presented as possible.

1.02 FORECASTS OF PAYMENTS

- A. Within 30 days of Notice to Proceed, the Contractor shall submit to the Owner or Owner's Designated Agent a chart forecasting the monthly partial payment amounts that are anticipated for the Project. During progress of the job, mark this chart to show actual payments to date, revise the forecast of payments as necessary, and submit the revised chart to the Owner or Owner's Designated Agent monthly.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

END OF SECTION

## SECTION 01700

### CONTRACT CLOSEOUT

#### PART 1 GENERAL

##### 1.01 SCOPE OF WORK

- A. This Section outlines the procedure to be followed in closing out the Contract.

##### 1.02 SUBSTANTIAL COMPLETION

- A. The Substantial Completion dates shall be established as stated in the Contract.

##### 1.03 FINAL CLEANING

- A. At the completion of work and immediately prior to final inspection, cleaning of the entire project shall be accomplished according to the following provisions:
  - 1. The Contractor shall thoroughly clean, sweep, wash, and polish all work and equipment provided under the Contract, including finishes. The cleaning shall leave the structures and site in a complete and finished condition to the satisfaction of the Engineer.
  - 2. All Subcontractors shall similarly perform, at the same time, an equivalent thorough cleaning of all work and equipment provided under their contracts.
  - 3. The Contractor shall remove all temporary structures and debris, including all dirt, sand, gravel, rubbish and waste material. See Section 01500, Temporary Facilities.
  - 4. Should the Contractor not remove rubbish or debris, or not clean the buildings and site as specified above, the Owner reserves the right to have the cleaning done at the expense of the Contractor.
- B. Use only cleaning materials recommended by manufacturer of surface to be cleaned.
- C. Use cleaning materials only on surfaces recommended by cleaning material manufacturers.
- D. In preparation for substantial completion or occupancy, conduct final inspection of sight-exposed interior and exterior surfaces, and of concealed spaces.
- E. Remove grease, dust, dirt, stains, labels, fingerprints, and other foreign materials from sight-exposed interior and exterior finished surfaces. Polish surfaces so designated to shine finish.
- F. Repair, patch, and touch up marred surfaces to specified finish, to match adjacent surfaces.
- G. Replace air-handling filters if units were operated during construction.
- H. Vacuum clean all interior spaces, including inside cabinets. Broom clean paved surfaces, rake clean other surfaces of grounds.

- I. Handle materials in a controlled manner with as few handlings as possible. Do not drop or throw materials from heights.
- J. Schedule cleaning operations so that dust and other contaminants resulting from cleaning process will not fall on wet, newly painted surfaces.

#### 1.04 FINAL INSPECTION

- A. After final cleaning and restoration and upon written notice from the Contractor that the work is completed, the Engineer will make a preliminary inspection with the Owner and the Contractor present. Upon completion of this preliminary inspection, the Engineer will notify the Contractor, in writing, of any particulars in which this inspection reveals that the work is defective or incomplete.
- B. Upon receiving written notice from the Engineer, the Contractor shall immediately undertake the work required to remedy deficiencies and complete the work to the satisfaction of the Engineer.
- C. When the Contractor has corrected or completed the items as listed in the Engineer's written notice, he shall inform the Engineer, in writing, that the required work has been completed. Upon receipt of this notice, the Engineer, in the presence of the Owner and the Contractor, will make his final inspection of the project.
- D. Should the Engineer find all work satisfactory at the time of his inspection, the Contractor will be allowed to make application for final payment. Should the Engineer still find deficiencies in the work, the Engineer will inform the Contractor of the deficiencies and will deny the Contractor's request for final payment until such time as the Contractor has satisfactorily completed the required work.

#### 1.05 FINAL SUBMITTALS

- A. No application for final payment will be accepted until all submittals have been made and approved by the Engineer, including, but not limited to, the following:
  - 1. Final shop drawings.
  - 2. Project Record Documents.
  - 3. All interface information.
  - 4. All Operation and Maintenance Manuals.
  - 5. All required indices and schedules.
  - 6. All Manufacturers' Certificates of Proper Installation.
  - 7. All construction photographs, including those of the completed project.
  - 8. All State required submittals.
  - 9. Certificate that all outstanding debts are paid and that there are no liens on the Project.

1.06 ACCESSORY ITEMS

- A. The Contractor shall provide to the Owner, upon acceptance of the equipment, all special accessories required to place each item of equipment in full operation. These special accessory items include, but are not limited to, the specified spare parts, adequate oil and grease as required for the first lubrication of the equipment, initial fill-up of all chemical tanks and fuel tanks, light bulbs, fuses, hydrant wrenches, valve wrenches, valve keys, handwheels, and other expendable items as required for initial start-up and operation of all equipment.

1.07 GUARANTEES, BONDS, AND AFFIDAVITS

- A. No application for final payment will be accepted until all guarantees, bonds, certificates, licenses, and affidavits required for work or equipment as specified are satisfactorily filed with the Engineer.

1.08 RELEASE OF LIENS OR CLAIMS

- A. No application for final payment will be accepted until satisfactory evidence of release of liens has been submitted to the Owner as required by the General Condition.

1.09 FINAL PAYMENT

- A. Final payment will be made to the Contractor in accordance with the Agreement.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

END OF SECTION