

CITY OF LA PINE
BID DOCUMENTS
FOR
**SIDEWALK AND MULTI-USE PATH
IMPROVEMENT PROJECT**

PLANS PREPARED FOR:
THE CITY OF LA PINE



PLANS PREPARED BY:
THE CITY OF LA PINE
P.O. Box 2460
16345 Sixth Street
La Pine, Oregon 97739

And

CENTURY WEST ENGINEERING CORPORATION
1020 SW Emkay Drive, Suite 100
Bend, Oregon 97702

BIDDER'S REQUIRED SUBMITTAL LISTING

The required submittal listing for the “**Sidewalk and Multi-Use Path Improvement Project**” is as follows:

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TOTAL BID PROPOSAL WILL CONTAIN A MINIMUM OF:

13 PAGES

INVITATION TO BID

Sealed bids for the construction of the City of La Pine, **Sidewalk and Multi-Use Path Improvement Project**, addressed to the City Manager, City of La Pine, Oregon will be received until 2:00 PM local time at City Hall, P.O. Box 2460, 16345 Sixth Street, La Pine, Oregon, on **May 6, 2014** and then publicly opened and read at 2:00 PM at City Hall, in La Pine, Oregon. First tier subcontractor list is required to be submitted by 4:00 PM, same day (Note: The first tier subcontractor list may also be submitted with the sealed bid at contractor’s preference). Bids shall be clearly labeled: **Sidewalk and Multi-Use Path Improvement Project**.

Scope of Work:

Schedule A improvements generally include construction of an 8-foot wide concrete sidewalk, stormwater swale, and landscape improvements in front of City Hall. The work includes ADA improvements, conduit trenching, and other related and incidental work.

Schedule B improvements generally include construction of an 8 to 10-foot wide concrete and asphalt multi-use path along Huntington Road. The work includes ADA improvements and other related and incidental work.

The City of La Pine reserves the right to authorize construction for schedules A and B separately and independently without guarantee all schedules will be authorized for construction.

The City estimates the cost of improve ments at \$100,000 to \$150,000.

Construction plans titled, **Sidewalk and Multi-Use Path Improvement Project**, dated **April 2014**, consisting of **11** sheets, are herein incorporated into the bid documents for detail of scope of services. **All workmanship, materials, and conditions shall conform to the 2008 Oregon Standard Specifications for Construction.**

This is a Public Works Contract and subject to Oregon Bureau of Labor and Industries (BOLI) Prevailing Wage Rates Effective January 1, 2014 for Region 10.

Completion:

It is the intent of the City of La Pine to have all Schedule A work complete by June 27, 2014 and all Schedule B work completed by August 1, 2014.

Project Timeline:

Advertisement	April 14, 2014
Bid Opening	May 6, 2014
Bid Review/Intent to Award	May 9, 2014
Council Contract Award	May 14, 2014

Work to Begin by	May 19, 2014
Schedule A Work Completed by	June 27, 2014
Schedule B Work Completed by	August 1, 2014

Liquidated Damages

Liquidated damages will be assessed at \$500 per day should the Contractor fail to complete the work within the time allowed.

Contract Documents

Contract Documents may be examined at the following locations:

- City of La Pine, City Hall
- Century West Engineering, 1020 SW Emkay Drive, Suite 100, Bend, Oregon

Contract Documents may be obtained by bidders for a non-refundable price of **\$30.00** at the Century West Engineering, 1020 SW Emkay Drive, Suite 100, Bend, Oregon.

Addendums issued during the advertisement phase of the project will be posted on the City of La Pine website and the Central Oregon Builder's Exchange website only. Bidders shall submit their proposal on the proposal forms contained within the contract documents. The City of La Pine will not accept any bid that is not submitted on the proposal forms from the Contract Documents package.

All requests for plans and bid documents shall be made to Jim Lord, Engineer, Century West Engineering Corporation, (541) 322-8962.

Requirements of Bidders

Each proposal must be submitted on the prescribed forms and accompanied by a certified check or Bid Bond executed on the prescribed form, payable to the City of La Pine, Oregon, in an amount not less than 10% (10 percent) of the amount bid. The successful Bidder will be required to furnish the necessary additional bond(s) for the faithful performance of the Contract, as prescribed in the Contract Documents.

The attention of bidders is directed to the State government requirements and conditions of employment to be observed and minimum wage rates to be paid under the Contract.

The City of La Pine will closely review the Contractor's Experience and Qualifications form to ensure a Contractor with acceptable experience is awarded the Contract for the **Sidewalk and Multi-Use Path Improvement Project.**

Bidder must be registered with the Construction Contractors Board (ORS 701.055) or the bid will not be received or considered.

Pre-Bid Meeting

There will be no pre-bid meeting for this project.

Proposals

The City reserves the right to reject all proposals or any proposal not conforming to the requirements of the Contract Documents and postpone the awarding of the contract for a period of not more than 30 days from the bid opening date.

Notification

The notification of Intent to Award will be made to all responsible bidders within seven (7) calendar days of the bid opening. Protest of bid results and Intent to Award must be in writing, must be by a bidder in good legal standing, must be specific, and must be received within three (3) calendar days of the date of mailing the Intent to Award. The protest envelope must give bid title reference and must be addressed to Rick Allen, City Manager, P.O. Box 2460, 16345 Sixth Street, La Pine, Oregon 97739.

Public Record

Any information submitted through this solicitation process shall be a public record. However, during the evaluation period, the proposals shall be considered confidential information. If any proposal contains information that is considered a trade secret under ORS 192.501(2), each sheet containing proprietary information shall be marked as follows:

"This data constitutes a trade secret and shall not be disclosed except in accordance with Oregon Public Records Law, ORS chapter 192."

The City accepts no liability for the inadvertent or unavoidable release of any confidential information submitted, and claims arising out of any public record request for such information shall be at the consultant's expense.

Identifying the proposal in whole as a trade secret is not acceptable. Failure to identify a portion of the proposal as a trade secret shall be deemed a waiver of any future claim of that information as a trade secret.

INSTRUCTION TO BIDDERS

PROJECT TITLE: Sidewalk and Multi-Use Path Improvement Project

LOCATIONS: Located along the west (north) side of US Highway 97 south of 6th Street and along the east side of Huntington Road from the Bi-Mart Access Lane to Caldwell Drive.

OWNER: City of La Pine
P.O. Box 2460
16345 Sixth Street
La Pine, Oregon 97739

PROPOSAL: To be entitled to consideration, please include:

Bid Schedule

1. Use bid schedule(s) provided. Fill in all blank spaces.
2. Bid shall be typed or prepared in blue ink, and signed in blue ink.
3. Complete without alterations or erasures.
4. Shall not contain any recapitulation of work to be done.
5. No oral, telephonic or telegraphic proposal or modifications will be considered.
6. Contractor must certify that it is or is not an Oregon business as per ORS 279A.120. ORS 279A.120 requires public contracting agencies, in determining the lowest responsible bidder, to add a percent increase to each out-of-state bidder's bid price which is equal to the percent of preference given to local bidders in the bidder's home state. The bidder shall certify that it is or is not an Oregon contractor as defined under ORS 279A.120, Preferences; Foreign Contractor, i.e., a foreign contractor is one who is not domiciled in or registered to do business in the State of Oregon.
7. All subcontractors are to be approved in writing by the Owner and carry the same insurance requirements as the prime contractor. Subcontractors shall submit Contractor's Board license number, Federal Identification Number, State Unemployment Number, and Certification of ORS 279A.120 as stated in the First-Tier Subcontractor Disclosure Form.

Bid Bond

Enclose a bidder's bond, certified check (or cashier's) check made payable to the Owner in an amount equal to 10% of the total bid.

First Tier Subcontractor Disclosure Form

The First Tier Subcontractor Disclosure Form must be completed and returned within two (2) hours of the bid submittal time. The first tier subcontractor disclosure form may also be submitted with the sealed bid at the contractor's preference.

Proposal

The Proposal Form shall be completed and returned with the Sealed Bid.

Prevailing Wage Rate Statement

The Prevailing Wage Rate Statement shall be completed and returned with the Sealed Bid per ORS 279C.800 – 279C.870.

Drug Testing Policy Statement

The Drug Testing Policy Statement shall be completed and returned with the Sealed Bid per ORS 279C.505 (2003 Chapter 794.138).

Non-Collusion Affidavit

The Non-Collusion Affidavit shall be completed and returned with the Sealed Bid.

Bid Submittal

Address and Deliver:

1. Address: City of La Pine
P.O. Box 2460
16345 Sixth Street
La Pine, Oregon 97739

2. Deliver: To CITY MANAGER, in an opaque sealed envelope marked **Sidewalk and Multi-Use Path Improvement Project**, with the name of the bidder, on or before **May 6, 2014 (2:00 pm)**.

AWARD OF CONTRACT:

The award of the contract shall comply with ORS 279B.055.

Bidder should notify Owner prior to bid opening date, should omissions or errors be found in Contract Documents. Owner will clarify by issuing instructions in the form of Addenda which will become a part of the Contract.

Owner will not be responsible for any oral instructions or interpretations.

EXAMINATIONS:

Bidder is responsible for verifying dimensions and bid quantities prior to bidding.

Before submitting a proposal, the bidder shall carefully examine all Contract Documents, visit the site of the work, and fully inform themselves of all existing conditions and limitations. Bidders shall include in the Bid, sum or sums sufficient to cover the cost of all items in this Contract.

Bidder should notify Owner prior to bid opening date, should omissions or errors be found in the Contract Documents. Owner will clarify by issuing instructions in the form of Addenda which will become a part of the contract.

Owner will not be responsible for any oral instructions or interpretations.

Bidder is responsible to review all documents he/she will submit in the Proposal as complete. All pages listed on the Bidder's Required Submittal Listing are required to be included in the Proposal.

ANY ADDENDA:

Any addenda issued during the time of bidding are to be covered in the Proposal, and in closing a Contract they will become part thereof. Signed copy of the addenda is to be included with the bid submittal. All addenda will be made in PDF format, available on the City of La Pine website at www.ci.la-pine.or.us . The City of La Pine will not mail or fax notice of Addenda, but will publish notice of any addenda on the City of La Pine's website. Addenda may be downloaded off the City's website. Bidders should frequently check the website at least once weekly until the week of bid opening. The City will issue the last addenda at least three business days prior to bid opening. Any addenda issued during the time of bidding are to be covered in the Proposal, and in closing a Contract they will become part thereof.

SUBSTITUTIONS:

In order to obtain approval of material, products, methods, as equal to those specified, submit to Owner substitution request at least five (5) days before bid opening.

CONTRACT DOCUMENTS:

The contractor and subcontractors shall comply with all Conditions of the Contract Documents.

PAYMENT ON CONTRACT:

Payment will be made as provided in the Contract. The Contractor will be permitted to invoice monetary amounts corresponding to unit quantities constructed up to the date of invoice submittal. Unit quantities are subject to approval by the Owner. The Owner may reserve as retainage five percent (5%) of each progress payment and release said retainage per ORS 279C.570.

The contractor and subcontractors must pay not less than the minimum hourly rate of wage as determined by the Commissioner of Bureau of Labor and Industries, and which is not less than prevailing wage. They or their sureties must execute a statement under oath

in a form prescribed by the State Labor Commissioner, certifying the hourly rate of wage paid and that no workman was paid less than prevailing rate of wage or less than the minimum hourly rate of wage and file with the Clerk of the District prior to any disbursement under the Contract and in accordance with ORS 279C.800 thru 279C.870. Contractors shall make payments in accordance with the Contract, ORS 279C.840 to 279C.870 and the laws of the State of Oregon. Contractor is required to have a \$30,000 Public Works Bond filed with CCB before starting work on the project, unless exempt. (SB 477, Sections 2-5) Contractor is required to verify their subcontractors have filed bond.

PECUNIARY INTEREST:

No director or employee of Owner shall have any pecuniary interest in the project.

LOCAL LABOR:

Contractor and subcontractors are encouraged to use local labor when available.

QUALIFICATIONS AS A CONDITION PRECEDENT TO BIDDING:

All Contractors submitting a bid must be registered with the Construction Contractors Board, or the bid will not be received or considered. A bid from an unregistered contractor will be rejected as unresponsive.

COMPLETION:

The Project shall be completed by June 27, 2014.

Project Contact

All design questions and clarification inquiries shall be made to Jim Lord, Project Engineer, Century West Engineering, 541.322.8962.

All questions will be responded to in a written Addendum issued 3 days prior to bid opening. It will be available on the City of La Pine's website. All questions received after the issuance of the Addendum will not receive response.

Bidder Name _____

Bid Schedule**SIDEWALK AND MULTI-USE PATH IMPROVEMENT PROJECT****(THE SPECIAL SPECIFICATIONS AND DRAWINGS PROVIDED ARE APPLICABLE TO ALL BID ITEMS)****SCHEDULE A**

Item #	Description of Item (Spec. Section)	QTY	Unit	Unit Price Bid	Total Price Bid
1	Mobilization (00210)	1	Lump Sum	\$	\$
2	Temporary Work Protection and Direction of Traffic (00225)	1	Lump Sum	\$	\$
3	Erosion Control (00280)	1	Lump Sum	\$	\$
4	Construction Survey Work (00305)	1	Lump Sum	\$	\$
5	Saw Cutting (00310)	615	Foot	\$	\$
6	Clearing and Grubbing (00320)	1	Lump Sum	\$	\$
7	Aggregate Base, 6 inches thick	480	Square Yard	\$	\$
8	Level 3 ½" Dense HMAC Mixture, 6-inch (00745)	100	Square Yard	\$	\$
9	Concrete Walks, 4-inch (00759)	480	Square Yard	\$	\$
10	Concrete Curbs, Curb and Gutter (00759)	501	Foot	\$	\$
11	Modified Curb Opening (00759)	3	Each	\$	\$
12	Remove and Reinstall Existing Signs (00905)	1	Lump Sum	\$	\$
13	Schedule 40 Electrical Conduit, 2-inch (00960)	415	Foot	\$	\$
14	Light Pole	4	Each	\$	\$

	Foundations (00970)				
15	Water Quality Swale (01010)	1	Lump Sum	\$	\$
16	Medium Tree, 2.5" Cal (01040)	8	Each	\$	\$
17	Shrub, 2 Gal (01040)	42	Each	\$	\$
18	Shrub, 1 Gal (01040)	206	Each	\$	\$
19	Wood Chip Mulch (01040)	40	Cubic Yard	\$	\$
20	Sod Lawn (01040)	170	Square Yard	\$	\$
21	Flag Supports	10	Each	\$	\$
22	Irrigation System	1	Lump Sum	\$	\$

Total Amount Schedule A of Bid \$ _____

SCHEDULE B

Item #	Description of Item	QTY	Unit	Unit Price Bid	Total Price Bid
1	Mobilization (00210)	1	Lump Sum	\$	\$
2	Erosion Control (00280)	1	Lump Sum	\$	\$
3	Construction Survey Work (00305)	1	Lump Sum	\$	\$
4	Clearing and Grubbing (00320)	1	Lump Sum	\$	\$
5	Aggregate Base, 6-inch (00640)	1985	Square Yard	\$	\$
6	Aggregate Base, 8-inch	454	Square Yard	\$	\$
7	Level 2 ½" Dense HMA, 2-inch (00745)	1550	Square Yard	\$	\$
8	Concrete Walks, 4-inch (00759)	435	Square Yard	\$	\$
9	Truncated Dome Detectable Warning, Full Width (00759)	3	Each	\$	\$
10	Remove and Reinstall Existing Signs (00905)	1	Lump Sum	\$	\$

11	Schedule 40 Electrical Conduit, 2-inch (00960)	50	Foot	\$	\$
12	Light Pole Foundations (00970)	3	Each	\$	\$

Total Amount Schedule B of Bid \$ _____

Total Bid Schedule A plus Schedule B \$ _____

Total Bid price (A+B) written out in words: _____

All Unit Price Bids should be considered as "Furnished and Installed".

Billing is to be as complete units and partial bills will not be paid.

Please invoice referencing the above exact line item numbers and line items. All quantities must be approved by the Project Engineer before invoicing.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items shall be based on actual quantities, determined as provided in the Contract documents.

To Be Considered Responsive, the following must be signed and completed by your firm:

We hereby certify to do the work as specified and at the price as quoted in conformance to all the City, State, and Federal Regulations that are applicable and will indemnify defend and hold harmless the City of La Pine and its present and future employees, agents, independent contractors, and insureds for from and against all claims, damages, liabilities, penalties, fines, and costs including attorney fees costs and expenses arising out of any actions or omissions caused by our company or its representatives or subcontractors during the performance of this contract.

Bidders Official Company Name _____

Address _____

By _____ Date _____
(Signature of Authorized Official and Title)

By _____ Phone _____
(Type or Print Name)

Federal I.D.# _____ FAX # _____

Email: _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, That _____
hereinafter called the PRINCIPAL, and _____
a corporation duly organized under the laws of the State of _____, having its
principal place of business at _____, in the State of
_____, and authorized to do business in the State of Oregon, as SURETY, are
held and firmly bound unto the City of La Pine, Oregon, as obligee, hereinafter called
the CITY, in the penal sum of _____ dollars
(\$ _____) for the payment of which, well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

THE CONDITIONS OF THIS BOND ARE SUCH That, whereas the PRINCIPAL herein
is herewith submitting his or its bid proposal for the **Sidewalk and Multi-Use Path
Improvement Project**, said bid proposal, by reference thereto, being hereby made a
part hereof.

NOW, THEREFORE, if the said bid proposal submitted by the said PRINCIPAL be
accepted, and the contract be awarded to said PRINCIPAL, and if the said PRINCIPAL
shall execute the proposed Agreement and shall furnish such performance and
payment bonds as required by the bidding and Contract Documents within the time
fixed by said documents, then this obligation shall be void; if the PRINCIPAL shall fail to
execute the proposed Agreement and furnish said bond, the SURETY hereby agrees to

pay to the CITY the penal sum as liquidated damages.

Signed and sealed this _____ day of _____, 2014.

By

Principal

Surety

By Attorney-in-fact

(A certified copy of the agent's power-of-attorney must be attached hereto.)

Exhibit 9 **FIRST TIER SUBCONTRACTOR DISCLOSURE FORM**

(OAR 137-040-0017)

PROJECT NAME: Sidewalk and Multi-Use Path Improvement Project

BID SUBMITTAL:

DATE: _____

DATE: _____

DISCLOSURE DEADLINE:

TIME: _____

TIME: _____

List below the Name, Address, Contact Name and Telephone Number of each subcontractor that will be furnishing labor or labor and materials that are required to be disclosed. Enter "NONE" if there are no subcontractors that need to be disclosed. (Attach additional sheets if needed).

Name/Address	Nature of Work Performed	Contact Phone #	Contract Amount
1.			
2.			
3.			
4.			
5.			

The above listed First-Tier Subcontractor(s) are providing labor or labor and materials with a dollar value equal to or greater than:

5% of the total Contract Price, but at least \$15,000 (including all alternates). If the dollar value is less than \$15,000 do not list the subcontractor above; or, \$350,000 regardless of the percentage of the total Contract Price.

FAILURE TO SUBMIT THIS FORM BY THE BID OPENING DEADLINE WILL RESULT IN A BID SUBMITTED BECOMING NON-RESPONSIVE, AND SUCH BIDS SHALL NOT BE CONSIDERED FOR AWARD.

FORM SUBMITTED BY (BIDDER NAME): _____

CONTACT NAME: _____ **PHONE #:** _____

DELIVER FORM TO AGENCY: City of La Pine

PERSON DESIGNATED TO RECEIVE FORM: Rick Allen, City Manager **PHONE #:** 541.536.1462

AGENCY ADDRESS: P.O Box 2460, 16345 Sixth Street, La Pine, Oregon 97739

UNLESS OTHERWISE STATED IN THE ORIGINAL SOLICITATION, THIS DOCUMENT SHALL NOT BE FAXED. IT IS THE RESPONSIBILITY OF THE BIDDERS TO SUBMIT THIS DISCLOSURE FORM AND ANY ADDITIONAL SHEETS, WITH THE PROJECT NAME CLEARLY MARKED, AT THE LOCATION INDICATED BY THE SPECIFIED DISCLOSURE DEADLINE. SEE INSTRUCTIONS TO BIDDERS.

Rev: 03-09-2000 Agency will insert "N/A" above if the Contract amount value is anticipated to be less than \$100,000. Otherwise this form must be submitted within two working hours of the advertised bid closing date and time; no later than the DISCLOSURE DEADLINE stated above. Bids which are submitted by Bid Closing, but for which the separate disclosure submittal has not been made by the specified deadline, are Not Responsive and shall not be considered for Contract award.

PROPOSAL
Sidewalk and Multi-Use Path Improvement Project

BIDDER'S DECLARATION:

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this proposal are those named herein, that this proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the City, and that the proposal is made without any connection or collusion with any person making another proposal on this Agreement.

The Bidder further declares that he has carefully examined the Contract Documents for the construction of the project, that he has personally inspected the site, that he has satisfied himself as to the quantities involved, and that this proposal is made according to the provisions and under the terms of the Contract Documents, which documents are hereby made a part of this proposal.

The Bidder further declares that the provisions required by ORS 279C.800 to 279C.870 relating to prevailing wage rates shall be complied with.

The Bidder further agrees that he has exercised his own judgment regarding subsurface condition and has utilized all data which he believes pertinent from the City and other sources in arriving at his conclusions.

CONTRACT EXECUTION:

The Bidder agrees that if this proposal is accepted, he will, within ten (10) days, not including Sundays and legal holidays, after notice of award, sign the Agreement in the form annexed hereto, and will at that time, deliver to the City of La Pine the PERFORMANCE BOND and the PAYMENT BOND required herein, and will to the extent of his proposal, furnish all machinery, tools, apparatus, and other means of construction and do the work and furnish all the materials necessary to complete the work in the manner, in the time, and according to the methods specified in the Contract Documents and required by the City thereunder.

In the event that the Bidder shall fail to enter into a contract within such time, the bid security in the amount stated in the INVITATION TO BID and deposited herewith, shall be retained by the City and it is agreed that said sum is a fair measure of the amount of damage that the City will sustain because of such failure to enter into a contract.

CERTIFICATES OF INSURANCE:

The bidder further agrees to furnish the City, before commencing the work under the Contract, the certificates of insurance as specified in these documents.

CONSTRUCTION TIME LIMITS:

The Bidder agrees to begin work within ten (10) calendar days after the date of the City's written notice to proceed, and to complete all work to be done under the contract in the time frames noted in the INVITATION TO BID after the date of the City's written notice to proceed.

LIQUIDATED DAMAGES:

In the event the Bidder is awarded the Agreement and shall fail to complete the work within the time limit or extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid to the City per the Bid Documents.

SUBCONTRACTORS:

The Bidder will list all proposed subcontractors by their proper corporate name and the portion of the work the subcontractor intends to perform in the spaces provided below. Contractor is also required to comply with the regulations regarding First Tier Subcontractors and applicable submittals.

Subcontractor	Work item to be performed
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____

The City reserves the right to reject any subcontractor that the City deems unfit for the scope of the work proposed.

LUMP SUM OR UNIT PRICES:

The Bidder further proposes to accept as full payment for the work proposed herein the amounts computed under the provisions of the Contract Documents and based on the following lump sum or unit price amounts. The Bidder agrees that the lump sum prices and the unit prices represent a true measure of the labor and materials required to perform the work, including all allowances for overhead and profit for each type and unit of work called for in these Contract Documents.

The City reserves the right to reject any and all bids, to waive any informalities and to accept the bid of the lowest responsible Bidder.

ADDENDA:

The Bidder acknowledges that addenda numbers _____
(Bidder insert number of each addendum received)
have been received and examined as part of these Contract Documents.

SURETY:

If the bidder is awarded the construction contract on this proposal, the surety who provides the "Performance Bond" and "Payment Bond" will be:

Name: Address:

BIDDER:

The name of the bidder submitting this proposal:

Name: Address:

The above stated address is the address to which all communications concerned with this proposal and with the contract are to be sent. The names of the principal officers of the corporation, or partnership, or of all persons interested in this proposal as principals are as follows:

If sole proprietor or partnership:

In witness hereto the undersigned has set his (its) hand this
_____ day of _____, 2014.

Signature of Bidder

Title

If corporation:

In witness whereof the undersigned corporation has caused this instrument to be executed by its duly authorized officers this

_____ day of _____, 2014 _____
Name of Corporation

By _____
President

Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

Sworn to and subscribed before me this _____ day of _____, 2014.

(SEAL)

NOTARY PUBLIC OF OREGON

My commission expires: _____

Exhibit 7

PREVAILING WAGE RATE COMPLIANCE STATEMENT

The bidder states that provisions of ORS 279C.800 – 279C.870 (Oregon Prevailing Wage Rates) will be complied with on the **Sidewalk and Multi-Use Path Improvement Project.**

COMPANY NAME _____

SIGNATURE _____

TITLE _____

DATE _____

- Applicable prevailing wage rates are those in effect at the time the initial specifications are first advertised for bid solicitation. ORS 279C.830(1)(c); OAR 839-025-0020(4) and (5) The workers must be paid not less than the applicable state prevailing wage rate. ORS 279C.830; OAR 839-020-0115(3)
- The contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project. ORS 279C.830(2)(a) Every subcontractor is required to have a public works bond filed with the Construction Contractors Board before starting work on the project. ORS 279C.830(2)(b)
- If the contractor fails to pay for labor and services, the City can pay for them and withhold these amounts from payments to the contractor. ORS 279C.515; OAR 839.025.0020(2)(a)
- The contractor must pay daily, weekly, weekend and holiday overtime as required. ORS 279C.520; OAR 839-025-020(2)(c)
- The contractor must make prompt payment for all medical services for which the contractor has agreed to pay, and for all amounts for which the contractor collects or deducts from the worker’s wages. ORS 279C.530; OAR 839-025-0020(2)(d)
- The employer must give written notice to the workers of the number of hours per day and days per week they may be required to work. OAR 839-025-0020(2)(c)

BOLI Contact:

Bureau of Labor and Industries
 Wage and Hour Division
 Prevailing Wage Unit
 800 N.E. Oregon Street, Suite 1045
 Portland, OR 97232
www.oregon.gov/BOLI

Exhibit 8

DRUG TESTING POLICY STATEMENT

The bidder states that provisions of ORS 279C.505 [Chapter 794.138] requiring an employee drug-testing program will be complied with the **Sidewalk and Multi-Use Path Improvement Project.**

COMPANY NAME:

SIGNATURE:

TITLE:

DATE:



PERFORMANCE BOND

(NOTE: CONTRACTOR MUST USE THIS FORM, NOT A SURETY COMPANY FORM. MUST BE ACCOMPANIED BY A POWER OF ATTORNEY FOR THE SURETY’S OFFICER AUTHORIZED TO SIGN)

We the undersigned _____
 as PRINCIPAL (hereinafter called CONTRACTOR), and _____
 _____ a corporation organized and existing under and by virtue of the laws of
 the state of _____ duly authorized to do surety business in the
 state of Oregon and named on the current list of approved surety companies acceptable
 on federal bonds and conforming with the underwriting limitations as published in the
 Authorized Insurance List in the State of Oregon published by the Office of the
 Insurance Commissioner and which carries an "A" rating and is of the appropriate class
 for the bond amount as determined by Best's Rating System, as SURETY, hereby hold
 and firmly bind ourselves, our heirs, executors, administrators, successors and assigns,
 jointly and severally, to pay to CITY OF LA PINE as OBLIGEE (hereinafter called CITY
 OF LA PINE), the amount of _____
 (equal to 100% of the total bid amount) in lawful money of the United States of America.

WHEREAS, the CONTRACTOR entered into a contract with CITY OF LA PINE
 dated _____ which Contract is hereunto annexed and made a part hereof,
 for accomplishment of the all contract terms for the project described as follows:
Sidewalk and Multi-Use Path Improvement Project

NOW, THEREFORE, the condition of this obligation is such that if the
 CONTRACTOR shall promptly, truly and faithfully perform all the undertakings,
 covenants, terms, conditions, and agreements of the aforesaid contract and having
 performed its obligations there under, then this obligation shall be null and void;
 otherwise it shall remain in full force and effect.

Whenever CONTRACTOR shall be declared by CITY OF LA PINE to be in
 default under the Contract Documents for the project described herein, the SURETY
 may promptly remedy the default by completing the project in accordance with the
 Contract Documents and the project Specifications with a contractor approved by the
 CITY OF LA PINE. SURETY, for value received, further stipulates and agrees that all
 changes, extensions of time, alterations, or additions to the terms of the Contract or
 Specifications for the above described contract are within the scope of the SURETY’s

undertaking on this bond, and SURETY hereby waives notice of any such change, extension of time, alteration or addition to the terms of the ___contract or to the Work or to the Specifications. Any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications shall automatically increase the obligation of the Surety hereunder in a like amount, provided that such increase shall not exceed twenty-five percent (25%) of the original amount of the obligation without the consent of the Surety.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted.

SURETY shall indemnify, defend, and protect the CITY OF LA PINE against any claim of direct or indirect loss resulting from the failure of the CONTRACTOR (or any of the employees, subcontractors, or lower tier subcontractors of the CONTRACTOR) to faithfully perform the terms of the contract.

No right of action shall accrue on this bond to or for the use of any person or corporation other than CITY OF LA PINE or its heirs, executors, administrators, successors or assigns.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for obligations on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2014.

SURETY

CONTRACTOR

By:_____

By*:_____

Title:_____

Title:_____

Street Address

Street Address

City State ZIP

City State ZIP

Phone Number

Phone Number

* Must be signed by president or vice-president of Contractor.



PAYMENT BOND

(NOTE: CONTRACTOR MUST USE THIS FORM, NOT A SURETY COMPANY FORM. MUST BE ACCOMPANIED BY A POWER OF ATTORNEY FOR THE SURETY’S OFFICER AUTHORIZED TO SIGN)

KNOW BY ALL MEN BY THESE PRESENTS:

We the undersigned _____
 as PRINCIPAL (hereinafter called CONTRACTOR), and _____
 _____ a corporation organized and existing under and by virtue of the laws of
 the state of _____ duly authorized to do surety business in the
 state of Oregon and named on the current list of approved surety companies acceptable
 on federal bonds and conforming with the underwriting limitations as published in the
 Authorized Insurance List in the State of Oregon published by the Office of the
 Insurance Commissioner and which carries an "A" rating and is of the appropriate class
 for the bond amount as determined by Best's Rating System, as SURETY, hereby hold
 and firmly bind ourselves, our heirs, executors, administrators, successors and assigns,
 jointly and severally, to pay to CITY OF LA PINE as OBLIGEE (hereinafter called CITY
 OF LA PINE), the amount of _____
 in lawful money of the United States of America.

WHEREAS, the CONTRACTOR entered into a contract with CITY OF LA PINE
 dated _____, which Contract is hereunto annexed and made a part
 hereof, for accomplishment of the all contract terms for the project described as follows:
Sidewalk and Multi-Use Path Improvement Project

NOW, THEREFORE, the condition of this obligation is such that if the
 CONTRACTOR shall promptly, truly and faithfully perform all the undertakings,
 covenants, terms, conditions, and agreements of the aforesaid contract and having
 performed its obligations thereunder and promptly make payments to all persons, firms,
 subcontractors, corporations and/or others furnishing materials for or performing labor in
 the prosecution of the Work provided for in the aforesaid contract, then this obligation
 shall be null and void; otherwise it shall remain in full force and effect.

Whenever CONTRACTOR shall be declared by CITY OF LA PINE to be in
 default under the Contract Documents for the project described herein, the SURETY
 shall promptly remedy the default by completing the project in accordance with the
 Contract Documents and the project Specifications with a contractor approved by the
 CITY OF LA PINE. SURETY, for value received, further stipulates and agrees that all
 changes, extensions of time, alterations, or additions to the terms of the Contract or

Specifications for the above described contract are within the scope of the SURETY's undertaking on this bond, and SURETY hereby waives notice of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications. Any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications shall automatically increase the obligation of the Surety hereunder in a like amount, provided that such increase shall not exceed twenty-five percent (25%) of the original amount of the obligation without the consent of the Surety.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted.

SURETY shall indemnify, defend, and protect the CITY OF LA PINE against any claim of direct or indirect loss resulting from the failure of the CONTRACTOR (or any of the employees, subcontractors, or lower tier subcontractors of the CONTRACTOR) to faithfully perform the terms of the contract.

No right of action shall accrue on this bond to or for the use of any person or corporation other than CITY OF LA PINE or its heirs, executors, administrators, successors or assigns.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for obligations on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2014.

SURETY

CONTRACTOR

By:_____

By*:_____

Title:_____

Title:_____

Street Address

Street Address

City State ZIP

City State ZIP

Phone Number

Phone Number

* Must be signed by president or vice-president of Contractor.

AFFIDAVIT #1

TO: CITY OF LA PINE, OREGON

RE: **Sidewalk and Multi-Use Path Improvement Project**

GENTLEMEN:

COMES NOW _____,

doing business as _____,

who being first duly sworn, deposes and says:

That all sums due to suppliers, material men, subcontractors, sub-subcontractors, employees and government agencies for wages, goods, services, products, or equipment furnished in connection with the above project have been paid in full. Except as hereinafter stated, this includes, but not limited to all State and Federal withholding taxes, worker's compensation insurance, Oregon unemployment insurance, FUTA unemployment insurance, and social security taxes.

The only obligations which have not been paid and which are known to us are as follows:

- 1. _____ \$ _____
- 2. _____ \$ _____
- 3. _____ \$ _____
- 4. _____ \$ _____
- 5. _____ \$ _____

If extra space is needed, please attach an extra sheet, date and sign.

WE HEREBY authorize you to pay from the remaining funds, the foregoing obligations by making a check payable to us and to the unpaid creditor/s jointly.

DATED this _____ day of _____, 2014.

By: _____

Title: _____

STATE OF OREGON)
)ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, the authorized representative for said business, and that (s)he was authorized to sign this affidavit.

NOTARY PUBLIC FOR OREGON

My Commission Expires: _____

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20____, by and between _____, hereinafter called "OWNER" and _____ doing business as (an individual,) or (a partnership, or (a corporation) hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of

2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.

3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within _____ calendar days after the date of the NOTICE TO PROCEED and will complete the same within _____ calendar days unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.

4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of \$_____, or as shown in the BID schedule.

5. The term "CONTRACT DOCUMENTS" means and includes the following:

- A Invitation to Bid
- B Bid Schedule
- C Bid Bond
- D First Tier Contractor Disclosure Form
- E Proposal
- F Non-Collusion Affidavit

- G Prevailing Wage Rate Compliance Statement
- H Contractor's Experience Questionnaire
- I Contractor's Equipment Listing
- H Drug Testing Policy Statement
- K Performance Bond
- L Payment Bond
- M Affidavit #1
- N Agreement
- O Standard General Conditions of the Construction Contract
- P Drawings prepared by Century West Engineering
numbered C-1 through C-10, and dated February, 2014.
- Q SPECIFICATIONS prepared or issued by Century West
Engineering dated February, 2014.
- R ADDENDA:

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS. The CONTRACTOR may not assign the contract without the prior written consent of OWNER.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in two copies, each of which shall be deemed an original on the date first above written.

OWNER

By _____
Name _____
Title _____

(Seal)

ATTEST:

Name _____
Title _____

CONTRACTOR:

By _____
Name _____
Address _____

(Seal)

ATTEST:

Name _____
Title _____

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



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

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

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The Associated General Contractors of America



Construction Specifications Institute

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American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400

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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The Contractor shall also review Section 00800 for additional changes to the documents.

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

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

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 five 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

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

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

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, attorneys, other professionals 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

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 Subcon-

tractors 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 Drawings 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 accor-

dance 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 submittal.

ted 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, insureds, 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

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

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 to 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

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

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 15 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 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). 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

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 ~~45~~ 10 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 10 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

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 two years 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

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 ~~40~~ 20 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

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

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

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 of Oregon and Deschutes County. Disputes will be resolved through arbitration with the American Arbitration Association.

17.06 *Headings*

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

SECTION 00800

SUPPLEMENTARY GENERAL CONDITIONS

These Supplementary Conditions amend the Standard General Conditions of the Construction Contract as prepared by Engineers Joint Contract Documents Committee and also know as document C-700 and other provisions of the Contract Documents as indicated below. Where any section, paragraph, subparagraph or clause in the General Conditions is supplemented by one of the following paragraphs, the provisions of such section, paragraph, subparagraph or clause in the General Conditions is amended, voided or superseded by such paragraph. The provisions of such section, paragraph, subparagraph or clause not so amended, voided or superseded shall remain in effect.

SC-1.01-45 Delete this paragraph in its entirety and insert the following:

45. *Substantial Completion* – When the Work (or a specified part thereof) has progressed to the point where, in the opinion of the Engineer as evidenced by Engineer’s definitive certificate of Substantial Completion, it is 100% complete in accordance with the Contract Documents with the exception of minor and specific corrective items that would normally be itemized on a final punch list and completed before final acceptance; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by Engineer’s written recommendation of final payment in accordance with paragraph 14.07. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

SC-1.02 Add the following paragraphs to the General Conditions:

- 1.02G Wherever in these specifications a product is referred to in the singular number, such reference shall include as many such items as are indicated or required to complete work.
- 1.02H These specification are of the abbreviated or ‘streamlined’ type and frequently include incomplete sentences. Words such as ‘shall,’ ‘shall be,’ ‘the Contractor shall,’ and similar phrases shall be supplied by inference.

SC-2.01 Delete paragraph 2.01B of the General Conditions.

Refer to paragraph SC-5.03.B for Certificate of Insurance.

SC-3.03.A.1 Add the following to paragraph 3.03.A.1 of the General Conditions:

- 3.03.A.1 Before executing the Agreement, the Contractor shall thoroughly familiarize itself with all specified products and submit written notice to Engineer if it objects to the proposed use on any product.

Where a conflict occurs between or within the standards, specifications, and drawings, the more stringent or higher quality requirements shall apply. The precedence of the Construction Documents is in the following sequence:

- a. Addenda and modifications to the Drawings, and Specifications take precedence over the original construction documents.
- b. In the Drawings, the precedence shall be Drawings of a larger scale over those of a smaller scale, figured dimensions over scaled dimensions, and noted materials over graphic indications.
- c. Should there be a conflict within the Specifications on the Drawings, or between the Drawings and the Specifications the Engineer shall decide which stipulation will provide the best installation and his decision shall be final.

SC 4.03D Add the following:

4.03.D Historical or Archaeological Finds. Where objects of historical, archaeological or paleontological nature are encountered during the course of construction, including but not limited to ruins, sites, buildings, artifacts and fossils, the Contractor shall suspend operations in the area, preserve all such objects from disturbance and comply with the provisions of Oregon law in such matters. No additional costs shall be paid the Contractor for delays or required movement of manpower, materials and equipment to other portions of the job or any other costs resulting from the discovery of such finds. The Engineer will arrange for the disposition of all finds and shall notify the Contractor when to proceed with construction in the affected area.

SC 4.06.G Revise the first sentence in this section to read:

4.06.G Subject to the provisions of the Oregon Constitution, applicable laws and regulations, and to the limits of the Oregon Tort Claims Act, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers.....

SC 4.06.H Add the following prior to the last sentence in this section:

4.06.H Such indemnity identified above shall extend to any claim or action by the contractor relating to the worsening or spreading of hazardous material whether created by the Contractor or discovered during the course of the work as described in paragraph G above.

SC-5.01.A Add the following sentence to the General Conditions:

SC-5.01.A The Performance bond shall be in the amount of 120% of the contractor's total bid amount for the project.

SC-5.01.D Add the following paragraph to the General Conditions:

SC-5.01.D The Bonds shall be accompanied by the name and address of the registered Oregon agent for the surety who is authorized to receive notice of claims against the Bond. If the Contractor submits a cashiers check or a certified check in lieu of a surety bond pursuant to ORS 279C.380(1)(a), the Owner will hold the check for a period of 180 days beyond the date of final acceptance of the Work. If the Owner receives a notice of claim under ORS 279C.600 to 279C.620, the Owner will hold

an amount sufficient to cover the claim for a period of two years following final acceptance of the Work. If an action is instituted against the cashiers check or certified check, the Owner will hold an amount sufficient to cover the amount of the claim until the action is resolved.

SC-5.03 Replace paragraphs A and B of the General Conditions with the following:

Submission of Certificates of Insurance. When Contractor returns the executed Agreement to Owner for signature, it shall be accompanied by certificates (and other evidence of insurance requested by Owner) which Contractor is required to purchase and maintain in accordance with General Conditions and related Supplementary Conditions. On return of the signed Agreement to Contractor, Owner shall deliver certificates (and other evidence of insurance requested by Contractor) which Owner is required to purchase and maintain in accordance with the General Conditions and related Supplementary General Conditions.

SC-5.04.B.1 Add the following to paragraph 5.04.B.1 of the General Conditions:

5.04.B.1 Additionally insured parties to include tenants (if applicable) and subcontractors as well as all parties listed herein as also insured on Subcontractor's insurance, if required to be provided.

SC-5.04.B.8 Add the following to paragraph 5.04.B.8 to the General Conditions:

5.04.B.8 The Contractor shall maintain an all risk insurance policy covering the replacement cost of the work during the course of construction. The policy shall include the interests of the owner and engineer. The amount of insurance shall be equal to the completed value of the contract.

SC-5.04.C Add the following paragraph 5.04.C to the General Conditions:

5.04.C.1 The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

5.04.C.2 Workers Compensation, etc. under paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:

- (1) State Statutory
- (2) Applicable Federal (e.g., Longshoreman's) .. Statutory
- (3) Employer's Liability \$1,000,000

Contractor shall require all subcontractors to purchase and maintain Workman's Compensation Insurance, including Occupational Disease and Employer's Liability Insurance, in the amounts and coverage as required by all applicable Federal, State or other laws.

5.04.C.3 General Liability (under paragraphs 5.04.A.3, 5.04.A.4 and 5.04.A.5 of the General Conditions:

- (1) Bodily Injury (including completed operations and products liability):
 \$2,000,000 Each Occurrence
 \$2,000,000 Annual Aggregate
- (2) Property Damage:
 \$2,000,000 Each Occurrence
 \$2,000,000 Annual Aggregate
- (3) or a combined single limit of \$2,000,000
- (4) Personal Injury with employment exclusion deleted:
 \$1,000,000 Annual Aggregate

5.04C.4 Comprehensive Automotive Liability (under paragraph 5.04.A.6 of the General Conditions):

- (1) Bodily Injury:
 \$2,000,000 Each Occurrence
 \$2,000,000
- (2) Property Damage:
 \$2,000,000 Each Occurrence
 \$2,000,000
- (3) or a combined single limit of \$1,000,000 with and excess liability of \$1,000,000 umbrella form.

5.04.C.5 Contractual Liability (required by paragraph 5.04.B.4 of the General Conditions):

- (1) Bodily Injury (including completed operations and products liability):
 \$2,000,000 Each Occurrence
- (2) Property Damage:
 \$2,000,000 Each Occurrence
 \$2,000,000 Annual Aggregate
- (3) or a combined single limit of \$2,000,000.

SC-5.04.C.6 Add the following to paragraph 5.04.C.6 to the General Conditions:

5.04.C.6 The Contractor shall require all subcontractors to provide and maintain general liability, auto liability, professional liability (as applicable), and workers' compensation insurance with coverage's equivalent to those required by the general contractor. The Contractor shall require certificates of insurance from all subcontractors as evidence of coverage.

SC-5.09.A Add the following to the end of paragraph 5.09.A of the General Conditions:

5.09.A Owner reserves the right to review, investigate and reject insurance companies proposed by the Contractor and to reject such companies if they are determined inadequate to provide necessary coverage.

SC-6.01.C Add the following paragraph to the General Conditions:

- 6.01.C Failure of the Contractor to provide timely written notice of superintendent replacement shall constitute damages to the Owner and the liquidated damages amount of one day, as provided in the contract, shall be deducted from the contract amount by the Owner as damages and compensation for the administrative management of this change. Such liquidated damages assessment shall be made for each day that a qualified superintendent replacement has not been made available.

SC-6.03.C Add the following to the end of paragraph 6.03.C of the General Conditions:

- 6.03.C Contractor agrees to prefer goods or services that have been manufactured or produced in this State if price, fitness, availability or quality are otherwise equal.

SC-6.03.D Add the following paragraph to the General Conditions:

- 6.03.D Material Furnished by the Owner. The Owner may furnish specific material as shown on the plans or indicated in the specifications. The fact that the Owner is to furnish material is conclusive evidence of its acceptability for the purpose intended and the Contractor may continue to use it until otherwise directed. If the Contractor discovers any defect in material furnished by the Owner, it shall immediately notify the Engineer.

Unless otherwise noted or specifically stated, materials furnished by the Owner which are not of local occurrence are considered to be FOB the nearest freight station. The Contractor shall be prepared to unload and properly protect all such material from damage or loss. The Contractor shall be responsible for material lost or damaged after receipt of material at the point of delivery.

SC-6.03.E Add the following paragraph to the General Conditions:

- 6.03.E The Contractor Shall be responsible for any loss, damage, or destruction of its own property, equipment, and materials used in conjunction with the work.

SC-6.05 Add the following paragraph to the General Conditions:

- 6.05 After the Effective Date of Agreement, the Engineer may, at is option, consider formal request from the Contractor for substitution of materials or methods in place of those specified when submitted in accordance with the requirements of this section and related sections of the General Requirements.

SC-6.05.A.2 Add the following paragraph 6.05.A.2 to the General Conditions:

- 6.05.A.2 It shall be the responsibility of the Contractor to insure that the items to be furnished as substitution shall fit the space available. The Contractor shall make necessary field measurements to ascertain space requirements, including those for connections, and shall order such sizes and shapes of equipment that the final installation shall suit the true intent and meaning of the plans and specifications. Where equipment requiring different arrangement of connections from those shown

is approved, it shall be the responsibility of the Contractor to install the equipment to operate properly and in harmony with the intent of the plans and specifications and to make all changes in the work required by the different arrangement of connections.

SC-6.06.B Add the following to paragraph 6.06.B of the General Conditions:

Submission prior to the effective date of the Agreement of a list of subcontractors and suppliers proposed to be first employed by the Contractor is a requirement of the Contract Documents. This list shall be comprehensive and shall be in addition to the First Tier Subcontractor Disclosure requirements of the Contract Documents.

SC-6.06.G Replace the first sentence with the following:

All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate written agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the all terms and conditions of the Contract Documents for the benefit of Owner and Engineer.

SC-6.09. Add the following paragraphs to the General Conditions:

- 6.09.D “Contractor shall comply with all provisions of Oregon Public Contracting laws, as further specified in Exhibit A, attached hereto and incorporated herein by this reference.”
- 6.09.D.1 The wage rates are minimum rates only and the Owner will not consider any claims for additional compensation because of payment made by the Contractor or a Subcontractor of any wage rate in excess of the prevailing rate.
- 6.09.D.2 If Owner determines at anytime that the prevailing rate of wage has not or is not being paid as required herein, it may retain from moneys due to Contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the Contract. Liquidated damages for failure to pay the rate of wage required herein shall be an additional amount equal to the unpaid premium, over and above the liability of the Contractor, any Subcontractor, or surety pay said unpaid minimum to any workers affected.
- 6.09.D.3 Under the provisions of Oregon Law, ORS 279C.845, the wage certification form on public works contracts must be provided. Contractor or contractor’s surety and every subcontractor or subcontractor’s surety shall file certified statements with the public agency in writing, on a form prescribed by BOLI, certifying the hourly rate of wage paid each worker and that no worker employed has been paid less than the prevailing or minimum hourly rate of wage specified in the Contract. Certified statements for each week during which the Contractor or Subcontractor employs a worker upon the project shall be submitted once a month, by the fifth business day of the following month. Such certified statements are to be filed with both the public contracting agency and the Wage and Hour Division, Bureau of Labor and Industries, 1400 S.W. 5th Avenue, Portland, Oregon 97201. This payroll information just be kept by the Contractor and/or Subcontractor for three (3) years.

- 6.09.D.4 Contractor shall strictly observe and obey all of the terms and provisions of Chapter 279C, Oregon Revised Statutes, pertaining specifically, but not exclusively, to the furnishings of Industrial Accident Fund, payment of laborers and material men, the withholding of State and Federal income and other taxes, hours of labor, and all other regulations provided in said chapter, and shall hold Owner harmless on account thereof.
- 6.09.D.5 Contractor shall make payment promptly, as due, to any person co-partnership, association, or corporation furnishing medical, surgical, hospital, or other needed care of attention incident to sickness or injury to the employees of contractor of all sums which the Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contractor of agreement for the purpose of providing payment of such service.
- 6.09.D.6 By execution of this Contract, contractor certifies under penalty of perjury that:
- (a) To the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.389(4); and
 - (b) Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontract.
- 6.09.D.7 This Contractor and all Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, marital status, age or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- 6.09.D.8 The Contractor shall post in conspicuous places available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause. Contractor's and Subcontractor's solicitations and advertisement for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, handicap, marital status, age or national origin.

SC-6.10. Add the following paragraphs to the General Conditions:

- 6.10.C Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 6.10.D Contractor shall pay promptly all contributions or amounts to the State Industrial Accident Fund and the State Unemployment Compensation Fund from Contractor in connection with the performance of the contract.

SC-6.22 Add the following new section to the General Conditions:

- 6.22.A Sole Risk. The performance of this Contract is at contractor's sole risk. The service(s) to be rendered under this Contract are those of an independent contractor who is not an officer or agent of the Owner as those terms are used in ORS 30.265.
- 6.22.B Liens. The Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner in connection with this Contract and agrees to assume responsibility should any lien or claim be filed.

SC-7.02 Add the following paragraph to the General Conditions:

- 7.02.C Contracts may be issued with different Contractors on each or any Schedule of this project so identified. Contractor shall consider this circumstance and shall not be entitled to consideration for additional costs or extension of time caused by this occurrence.

SC-8.02.A Delete this paragraph in its entirety and substitute the following in the General Conditions:

- 8.02.1. In case of termination of the employment of Engineer, Owner shall appoint an engineer whose status under the contract documents shall be that of the former engineer.

SC-8.04.A Add the following to the end of this paragraph in the General Conditions:

- 8.04.A Payment shall be made promptly in accordance with ORS 279.435 and both parties shall have the rights and duties (including the right to withhold retainage) specified in ORS 279.400 – 279.445 regarding payment.

SC-9.03 Delete paragraph 9.03 of the General Conditions in its entirety and substitute the following:

- 9.03 Engineer will furnish a Resident Project Representative to assist Engineer in providing more continuous observation of the Work. The responsibilities and authority and limitation thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.09 and in the Supplementary Conditions.

SC-9.03 Add the following paragraph to the General Conditions:

- 9.03.A. Should the Owner or Engineer furnish a Resident Project Representative, this assistant will be assigned to various portions of the work by the Engineer. It is understood that the Resident Project Representative shall have the power, in the absence of the Engineer, to issue instruction and make decisions within the limitations of the authority of the Engineer. The authority of such assistants shall, however, be limited to the particular portion or phase of the work to which they are assigned and by the particular duties assigned to them by the Engineer.

SC-9.08D Make the following changes to the General Conditions:

9.08D Place a period after the word Contractor. Delete the remainder of the paragraph.

SC-10.05A Delete paragraph 10.05A in its entirety and substitute the following in the General Conditions:

10.05A Except for those waived pursuant to Paragraph 14.09, Claims 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 remedies under these Contract Documents. Notwithstanding this Section 10.05, or provisions in Article 16, rights or remedies that may otherwise exist under Laws and Regulations to pursue causes of action are not limited by the Claims process established in these Contract Documents.

SC-10.05 Add the following paragraphs to the General Conditions:

10.05G After Owner receives Engineer's formal recommendation, Owner shall have the right to make written request to Contractor at any time for additional information which Contractor may possess to clarify the claim. Contractor shall provide such additional information within ten (10) days after it is requested by Owner. Owner may allow a reasonable time extension for good cause if Contractor presents a written request of the time extension prior to the expiration of the ten (10) days. If Contractor fails to furnish the additional information requested by Owner, Contractor will be deemed to have waived its claim.

SC-10.05.H Within thirty (30) days after receipt of all necessary information, Owner will issue a written decision on the claim, dispute, or other matter. The decision of Owner constitutes the exhaustion of contractual and administrative remedies. Owner's decision shall be final and conclusive unless it is fraudulent or unless Contractor commences action through a third party jurisdiction within thirty (30) days from receipt thereof.

SC-10.05.I Wherever in the Contract Documents reference is made to "appeals", "claims", "review by Engineer", or other similar phrases, such reference shall be construed to mean review in accordance with the provisions of this paragraph.

SC-12.01.C.2.c Delete paragraph 12.01.C.2.c of the General Conditions in its entirety and replace with the following:

12.01.C.2.c Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.01 and 12.01.C is that the Contractor will be paid a fee of five (5) percent and that the Subcontractor who actually performs the work and any higher tier Subcontractor will be paid a total (i.e. aggregate) fee of ten (10) percent of the costs incurred by Subcontractor performing the Work.

SC-12.02A Change the second sentence of paragraph 12.02A of the General Conditions to read:

Any claim for an adjustment of the Contract Time (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to Engineer promptly (but in no event later than ten days)... [remainder stays the same].

SC-13.03A Add the following to the end of paragraph 13.03.A:

Timely notice for inspections, tests, or approvals shall mean not less than 48 hours prior to the time when the inspection, test or approval is required.

SC-13.07.C: Delete this paragraph from the General Conditions.

SC-14.02.A.1 Revise first sentence of paragraph to read:

14.02.A.1 At least 30 days before the date established in the Agreement

SC-14.02.C.1 Revise first sentence of paragraph to read:

14.02.C.1 ...paid by Owner to Contractor on the date established for progress payments in the Agreement.

SC-14.02 Add the following to the end of paragraph 14.02 of the General Conditions:

14.02.D.1.e Third party claims filed or evidence indicating probable filing of such claims.

14.02.D.1.f Failure of Contractor to make payments properly or promptly to subcontractors for material, labor, or equipment.

14.02.D.1.g Damage to Owner or others.

14.02 .E Payments of Liens, Withholding Taxes, Contributions to Industrial Accident Fund, Labor and Materials. The Contractor shall make payment promptly as due to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for therein, and shall pay all contributions or amounts due the State Accident Insurance Funds from the Contractor or subcontractors incurred in the performance of this Contract. The Contractor shall permit no lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished, and shall promptly any and all withholding taxes, whether State or Federal. All social security charges and all contributions on amounts due to the State Unemployment Compensation Trust Fund, and promptly pay or cause to be withheld, as the case may be, any and all taxes, charges, or fees, or sums whatsoever which are now or any hereafter be required to be paid or withheld under any laws of the state and location where the work is to be performed. Contractor shall assume responsibility for satisfaction of any liens or claims filed or

prosecuted and shall defend, indemnify and hold Owner harmless against any such liens or claims.

- 14.02.F Payment of Claims by the Owner. In the event the Contractor shall fail, neglect, or refuse to make prompt payment of any claim for labor or services furnished to the Contractor or Subcontractor by any person in connection with this contract as such claim becomes due, whether said services and labor be performed for the Contractor or a Subcontractor, then in such event, the proper officer or officers representing the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor. The payment of a claim in the manner authorized herein shall not relieve the Contractor or his Surety from his or is obligation with respect to any unpaid claims. If the Owner is unable to determine the validity of any claim for labor or material furnished, the Owner may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by the Contractor or the Owner. There shall be no final acceptance of the work under Contract until all such claims have been resolved.

SC-14.04 Add the following paragraphs to the General Conditions:

- 14.04.F Substantially Complete defined in Supplementary General Conditions 1.01-45. Final completion of the entire project shall be no later than the time indicated on the Certificate of Substantial Completion. If no date is indicated, then thirty (30) days from the date of substantial completion will be considered maximum. If final completion is not accomplished within the time indicated, liquidated damages if included in this Contract and as defined in the Agreement will be reinstated at that date and will continue until final completion or a time extension is granted.
- 14.04.G Liquidated Damages. Should the Contractor fail to accomplish Substantial Completion or Final Acceptance in the time agreed upon in the Contract or within such extra time as may have been allowed for delays by extensions granted a provided in the Contract, the Contractor shall reimburse the Owner for the additional expense and damage for every day that the Contract remains uncompleted after the date of completion given in the Contract. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the work is \$500 per calendar day. The said amounts are hereby agreed upon as liquidated damages for the loss to the Owner and on account of the value of the operation of the works dependent thereon. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as liquidated damages which have accrued against the Contractor; and the Owner is authorized to deduct the amount of such damages from any moneys due the Contractor for work performed or material furnished under this Contract., and the Contractor and his sureties shall be liable for any excess.

SC-14.07.D Add the following paragraph to the General Conditions:

- 14.07.D Final payment will not be made to the Contractor until it files with the Owner a signed, State-approved Wage Certification form, certifying that it has paid not less than a prevailing rate of wages as required by law. The compliance statement shall be in a form similar to the following: "I (we) hereby certify that all work has been

performed and material supplied in accordance with the plans, specifications, and Contract Documents for the above work, and that: (1) No less than the prevailing rates of wages as ascertained by the governing body of the contracting agency has been paid to laborers, workmen and mechanics employed on this work; (2) There have been no unauthorized substitutions of subcontractors; nor have any subcontracts been entered into without the names of the subcontractors having been submitted the Engineer prior to start of work of such subcontracted work; (3) No subcontract was assigned or transferred or performed by any subcontractor other than the original subcontractor, without prior notice having been submitted to the Engineer together with the names of all subcontractors; (4) All claims for material and labor and other services performed in connection with these specifications have been paid; (5) All moneys due the State Industrial Accident Fund, the State Unemployment compensation Trust Fund, State Tax Commission, hospital associations and/or others have been paid.”

14.07.E Add the following paragraph to the General Conditions:

SC-14.07.E The total amount withheld as retainage, less amounts owed Owner, is due thirty (30) days after final acceptance of the work by the Owner and receipt by the Engineer from the Contractor statements of receipts in full from all subcontractors and material men connected with the work plus a duly notarized affidavit that to the best knowledge and information of the Contractor the statements include all labor and material connected with the work. Final payment shall include all moneys owed to the Contractor including amounts withheld as retainage.

SC-14.09A.1 Replace paragraph 14.09.A.1 of the General Conditions with the following:

14.09.A.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 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from negligent acts or omissions occurring during the work of the Contractor, any Subcontractor, or any of their agents or employees which resulted in property damage or personal injury to any person; however, it will not constitute a waiver by Owner of any rights in respect of Contractor’s continuing obligations under the Contract Documents.

SC-15.02.A Add the following to the end of this section:

Fail to make prompt payment to subcontractors and suppliers or to fully abide by the requirements of Exhibit A.

Abandon the work.

Sublet the work without the previous written consent of the Owner,

Assign this Agreement, or any claim thereunder, without the previous written consent of Owner.

Fail to achieve Substantial Completion within the Contract Time, or

Fail to make diligent and timely progress toward Substantial Completion.

Willful failure to faithfully perform the Contract according to its terms.

SC-15.03.A.3: Delete this paragraph from the General Conditions.

SC-16.01.A Replace 16.01 of the General Conditions with the following:

16.01.A Arbitration: All claims, disputes and other matters in question between Owner and Contractor arising out of, or related to the Contract Documents, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by arbitration in accordance with the rules of ORS Chapter 36 and those mutually agreed to by both parties. The Owner shall have the sole discretion as to whether or not a dispute will be decided by arbitration rather than through a court.

No demand for arbitration of any claim dispute or other matter shall be effective until after a claim or demand is made to the Engineer and the Engineer has rendered a written decision with respect thereto denying the claim or demand. No demand for arbitration of any such claim, dispute, or other matter shall be made later than thirty (30) days after the date on which the Engineer has rendered a written decision in respect herein. The failure to demand arbitration within said thirty (30) days shall result in Engineer's decision being binding upon the Owner and the Contractor.

Notice of demand for arbitration shall be filed in writing with the other party to the agreement. The demand for arbitration shall be made within the 30-day period specified above. The Owner, if not the party demanding arbitration, has the option of allowing the matter to proceed with arbitration, or rejecting arbitration and requiring the other party to proceed through the courts for relief. If arbitration is allowed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Oregon law.

SC-16.02 Add the following paragraphs to the General Conditions:

16.02.A If either party commences any arbitration, legal action, suit or proceeding against the other to enforce the terms of this Contract or to interpret any provision of these Contract documents, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys fees and costs, as are fixed by the courts, incurred in any action, suit, bankruptcy proceeding, or proceeding and in any appeal there from.

16.02.B Neither party to the Contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due hereunder, without the previous written consent of the Owner.

END OF SECTION

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Exhibit A

Public Contracting Code

Requirements for Public Improvement Contracts Over \$50,000

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
 - (a) ORS 279C.580(3)(a) requires the prime contractor to include a clause in each subcontract requiring contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the prime contractor by the public contracting agency; and
 - (b) ORS 279C.580(3)(b) requires the prime contractor to include a clause in each subcontract requiring contractor to pay an interest penalty to the first-tier subcontractor if payment is not made within 30 days after receipt of payment from the public contracting agency.
 - (c) ORS 279C.580(4) requires the prime contractor to include in every subcontract a requirement that the payment and interest penalty clauses required by ORS 279C.580(3)(a) and (b) be included in every contract between a subcontractor and a lower-tier subcontractor or supplier.
2. Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Contractor or any Subcontractor in connection with the performance of the contract shall promptly be paid.
3. Contractor shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
4. A notice of claim on contractor's payment bond shall be submitted only in accordance with ORS 279C.600 and 279C.605.
5. Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
6. Contractor shall demonstrate to the City that an employee drug-testing program is in place within 10 days of receiving a Notice of Award.
7. Pursuant to ORS 279C.515, if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall

- not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
8. Pursuant to ORS 279C.515, if the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the City or contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10 day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is 30 days after the date when payment was received from the public contracting agency or from the Contractor, but the rate of interest shall not exceed 30%. The amount of interest may not be waived.
 9. As provided in ORS 279C.515, if the Contractor or a Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractor's Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
 10. Pursuant to ORS 279C.530, Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
 11. Contractor shall employ no person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, Contractor shall pay the employee at least time and one-half pay for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work is five (5) consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is 4 consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holidays as specified in ORS 279C.540.
 12. Pursuant to ORS 279C.540(2), the Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
 13. The provisions of ORS 279C.800 to ORS 279C.870 relating to the prevailing wage rates will be complied with.

14. Unless exempt under ORS 279C.836(4), (7), (8) or (9), before starting work on this contract, or any subcontract hereunder, contractor and all subcontractors must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the state of Oregon in the amount of \$30,000. The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836(2), unless the surety sooner cancels the bond. The surety may cancel the bond by giving 30 days' written notice to the contractor or subcontractor, to the board and to the Bureau of Labor and Industries. When the bond is canceled, the surety is relieved of further liability for work performed on contracts entered into after the cancellation. The cancellation does not limit the surety's liability for work performed on contracts entered into before the cancellation. Contractor further certifies that contractor will include in every subcontract or provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8), or (9).
 - (a) Unless exempt under ORS 279C.836(4), (7), (8), or (9), before permitting a subcontractor to start work on this public works project, the contractor shall verify that the subcontractor has filed a public works bond as required under this section or has elected not to file a public works bond under ORS 279C.836(7).
 - (b) Unless public contracting agency has been notified of any applicable exemptions under ORS 279C.836(4), (7), (8), or (9), the public works bond requirement above is in addition to any other bond contractors or subcontractors may be required to obtain under this contract.

15. As may be required by ORS 279C.845, Contractor or contractor's surety and every subcontractor or subcontractor's surety shall file certified payroll statements with the City in writing.
 - (a) If a contractor is required to file certified statements under ORS 279C.845, the City shall retain 25% of any amount earned by the contractor on the public works project until the contractor has filed with the City statement as required by ORS 279C.845. The City shall pay the contractor the amount retained within 14 days after the contractor files the required certified statements, regardless of whether a subcontractor has failed to file certified statements required by statute. The City is not required to verify the truth of the contents of certified statements filed by the contractor under this section and ORS 279C.845.
 - (b) The contractor shall retain 25% of any amount earned by a first-tier subcontractor on this public works contract until the subcontractor has filed with the City certified statements as required by ORS 279C.845. The contractor shall verify that the first-tier subcontractor has filed the certified statements before the contractor may pay the subcontractor any amount retained. The contractor shall pay the first-tier subcontractor the amount retained within 14 days after the subcontractor files the certified statements as required by ORS 279C.845. Neither the City nor the contractor is required to verify the truth of the contents of certified statements filed by a first-tier subcontractor.

16. All employers, including Contractor, that employ subject workers who work under this contract shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.
17. All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid.
18. The contract may be canceled at the election of City for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
19. Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors.
20. Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
21. In the performance of this contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies, and shall compost or mulch yard waste material at an approved site, if feasible and cost effective.
22. As may be applicable, Contractor certifies that all subcontractors performing construction work under this contract will be registered with the Construction Contractors Board or licensed by the state Landscaping Contractors Board in accordance with ORS 701.035 to ORS 701.055 before the subcontractors commence work under this contract.
23. Pursuant to City Public Contracting Rule 137-049-0880, the City may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the records relating to the Contract.
24. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state and local agencies, of which the City has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the contract:

FEDERAL AGENCIES:

- Agriculture, Department of
 - Forest Service
 - Soil Conservation Service
- Defense, Department of
 - Army Corps of Engineers
- Environmental Protection Agency
- Interior, Department of
 - Bureau of Sport Fisheries and Wildlife
 - Bureau of Outdoor Recreation
 - Bureau of Land Management

- Bureau of Indian Affairs
- Bureau of Reclamation
- Labor, Department of
 - Occupational Safety and Health Administration
- Transportation, Department of
 - Coast Guard
 - Federal Highway Administration

STATE AGENCIES:

- Agriculture, Department of
- Environmental Quality, Department of
- Fish and Wildlife, Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Land Conservation and Development Commission
- Soil and Water Conservation Commission
- State Engineer
- State Land Board
- Water Resources Board

LOCAL AGENCIES:

- City Council
- County Court
- County Commissioners, Board of
- Port Districts
- Metropolitan Service Districts
- County Service Districts
- Sanitary Districts
- Water Districts
- Fire Protection Districts

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SPECIFICATIONS **April, 2014**

PROJECT NAME: City of La Pine Sidewalk and Multi-Use Path Improvement Project

GENERAL SPECIFICATIONS:

Contractor shall obtain and follow all applicable Federal, State, County, City or other local permits regulations applicable to this work and contract. Contractor shall comply with all Federal, State, and local laws, codes, regulations and ordinances and perform all work in accordance with those building, environmental, OR-OSHA, or other applicable codes, rules and laws. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination.

All workmanship and materials shall be of the highest quality for the industry standard. Poor quality workmanship shall be just cause for rejection and shall be replaced including all labor and/or equipment at no additional cost to the City.

The contractor shall warrant all workmanship and construction for a period of one year from completion and final acceptance of the building project. The Contractor shall provide the Project Manager with copies of all product warranty information for materials used in the project. Work done under this contract shall proceed uninterrupted from the time Contractor mobilizes on site until completion. Contractor shall not stop progress of the work for any reason without the express written consent of the City. Contractor shall be responsible to maintain a clean and safe work area at all times. Contractor shall clean up and dispose of trash, debris, and left over material to the satisfaction of the City Project Manager or Inspector.

2008 OREGON STANDARD SPECIFICATIONS

This project will use the **2008 edition of the Oregon Standard Specifications for Construction** to provide detailed standard specifications on several items of work. Comply with the following standards as outlined below:

http://www.oregon.gov/ODOT/HWY/SPECS/standard_specifications.shtml#2008_Standard_Specifications

SECTION 00210 - MOBILIZATION

Comply with Section 00210 of the Standard Specifications.

SECTION 00225 – WORK ZONE TRAFFIC CONTROL

Comply with Section 00225 of the Standard Specifications.

SECTION 00280 - EROSION AND SEDIMENT CONTROL

Comply with Section 00280 of the Standard Specifications

SECTION 00305 - CONSTRUCTION SURVEY WORK

Section 00305, which is not a Standard Specification, is included for this Project by Special Provision.

00305.00 Scope - Provide construction survey work using the drawings as guidance for location of project features. The contractor shall use conventional means to layout and measure lengths and slopes to ensure all elements meet ADA requirements and locations are marked for construction. Some expected tools would be tape measure and smart level and will require some field measurements to establish form grades and locations. ADA ramps, ADA blended transitions, and curbs will need to be carefully measured and fitted. The contractor is expected to check and adjust forms as needed to meet all of the design elements requirements.

Contractor shall locate survey monuments which may be disturbed by construction. Contractor shall re-set all survey monuments disturbed or removed during construction. For estimating purposes approximately six survey monuments were identified during design as potential conflicts with construction.

All survey work shall be completed by a land surveyor registered as a professional land surveyor in the State of Oregon.

00305.80 Measurement - No measurement of quantities will be made for construction survey work.

00305.90 Payment - The accepted quantities of construction survey work will be paid for at the Contract lump sum amount for the item "Construction Survey Work".

SECTION 00310 - REMOVAL OF STRUCTURES AND OBSTRUCTIONS

Comply with Section 00310 of the Standard Specifications modified as follows:

00310.41 Removal Work, (a) General – Add the following sentence to the end of this subsection:

“Saw cuts shall extend completely through the material in a smooth and vertical edge.”

00310.92 Separate Item Basis, Pay Item – Add the following:

“Saw Cutting.....Foot”

End of Section

SECTION 00320 – CLEARING AND GRUBBING

Comply with Section 00320 of the Standard Specifications

SECTION 00440 - COMMERCIAL GRADE CONCRETE

Comply with Section 00440 of the Standard Specifications modified as follows:

00440.10 Materials - In the list of materials, delete the "Aggregates....02690" line.

00440.12 Properties of CGC – Replace this subsection with the following:

Furnish a workable CGC mixture that is uniform in composition and consistency, and has the following characteristics:

- **Entrained Air** - 4.0% to 6.0%
- **Slump** - 4 inches or less
- **Compressive Strength** - Minimum 4,000 psi at 28 days
- **Temperature** - Minimum 50 °F to maximum 90 °F

00440.14 Acceptance Sampling and Testing: - Replace the following:

(a) General – The contractor shall provide a technician to perform all necessary testing. Test results shall be reported to the engineer within two business days of test completion.

End of Section

SECTION 00640 - AGGREGATE BASE AND SHOULDERS

Comply with Section 00640 of the Standard Specifications modified as follows:

00640.80 Measurement – Replace this subsection with the following:

The quantities of aggregate base will be measured on the square yard unit basis, measured in place, at the thickness shown in the plans, using a standard typical width of 8 or 10 feet, as indicated per plan, multiplied by the length of the centerline of the path to determine the measured quantity of shoulder rock.

The quantities of aggregate shoulder will be measured on the square yard unit basis, measure in place, using a standard typical width of 1 foot each side of the path multiplied by the length of the centerline of the path to determine the measured quantity of aggregate shoulder.

The quantities of aggregate for concrete structures including but not limited to sidewalks and curbs shall be incidental to those bid items.

00640.90 Payment, Pay Item – Modify this subsection as follows:

Unit of measurement for aggregate base shall be “Square yard”.

Unit of measurement for aggregate shoulder shall be “Square yard”.

End of Section

SECTION 00730 - ASPHALT TACK COAT

Comply with Section 00730 of the Standard Specifications supplemented and/or modified as follows:

00730.90 Asphalt - There will be no separate payment for construction of the asphalt tack coat.

End of Section

SECTION 00745 - HOT MIXED ASPHALT CONCRETE (HMAC)

Comply with Section 00745 of the Standard Specifications modified as follows:

00745.00 Scope - Add the following sentence to the end of this subsection:

The contractor shall provide a previously approved ODOT or commercial grade mix suitable for low traffic volume applications.

00745.11 (a) Asphalt Cement – Revise the first sentence of this section to read: Use PG 64-28 asphalt cement.

00745.16 HMAC Production QC/QA - Replace with the following:

Acceptance and testing of HMAC Production will be visual only. The contractor shall utilize standard pavement practices and operations typically necessary for quality pavement construction. Note that this applies to HMAC Production and that HMAC Quality Assurance and Acceptance will be tested for Level 2 HMAC. See 00745.16 (b) (2) (c).

00745.49 Compaction QC – Add the following to the beginning of the subsection:

The contractor shall retain and pay all costs for an independent certified testing agency to take samples, perform moisture content, gradation, compaction and

density test during placement of backfill, embankments, engineered fills, granular underlayments, subgrades, aggregate base courses and asphaltic concrete pavement.

The independent testing agency shall be qualified in accordance with ASTM E 329. The testing agency will conduct compaction testing, recommend methods of compaction, and issue final report to the Owner, through Engineer, on compaction test results and material compliance with specifications.

Compaction testing shall be completed at the rate of one test per 500 square yards of pavement construction. Test reports shall be delivered to the Engineer within one day of testing.

00745.16 (b) (2) (c) Quality Assurance and Acceptance – Revise the first sentence of this section to read:

The contractor shall provide quality assurance and acceptance testing for Level 2 HMAC.

00745.49 (b) (1) General – Revise the last sentence of the first paragraph to read:

Use the MAMD method of compaction measurement.

00745.61 Longitudinal Joints - Add the following to bullet (2):
All wearing surface joints abutting existing pavement shall be sealed using tack and sand.

00745.70 Pavement Smoothness - Replace with the following:

Pavement smoothness acceptance will be visual.

00745.80 Measurement – Replace the first paragraph of this subsection with the following:

The quantities of HMAC will be measured on the square yard unit basis, measured in place, at the thickness shown in the plans. A singular measurement will be made for the asphalt concrete mixture and the asphalt cement contained in the mixture.

00745.90 Payment – Modify this subsection as follows:

Unit of measurement for HMAC including asphalt cement shall be “Square yard”.

00745.95 HMAC Price Adjustments - Delete this section, there will be no price adjustment pay factor.

End of Section

SECTION 00759 – MISCELLANEOUS PORTLAND CEMENT CONCRETE STRUCTURES

Comply with Section 00759 of the Standard Specifications modified as follows:

00745.00 Scope - Add the following to the end of this subsection:

This item also includes the construction of concrete bases as shown in the plans at each bollard light location.

00759.12 Aggregate Base – Add the following to the subsection:

Aggregate base for concrete items including but not limited to walks and curbs is considered incidental to the appropriate bid items. Provide aggregate base as shown in the plans.

00759.12 Sidewalk Ramp Treatment – Replace this subsection with the following:

Furnish and install Armor-Tile Cast in Place detectable warning tile, or equal approved by the City of Sisters. Color shall be Federal Yellow, or equal approved by the City of La Pine. Detectable warning panels shall be set in concrete as shown in the plans.

Add the following subsection:

00759.80 Measurement – Add the following:

Truncated Dome Detectable Warning (Full Width) will be measured on the unit basis for each intersection between roadway and pathway. It may take multiple individual detectable warning tiles to comprise a single detectable warning under the contract.

The concrete required to set Truncated Dome Detectable Warnings will be incidental to this bid item.

Truncated domes associated with concrete sidewalks is incidental to the Concrete Walks bid item.

00759.90 Payment – Add the following:

(k) Truncated Dome Detectable Warning, Full Width.....Each

End of Section

SECTION 00905 – REMOVAL AND REINSTALLATION OF EXISTING SIGNS

Comply with Section 00905 of the Standard Specifications

SECTION 00960 – COMMON PROVISIONS FOR ELECTRICAL SYSTEMS

Comply with Section 00960 of the Standard Specifications.

SECTION 00970 – HIGHWAY ILLUMINATION

Comply with Section 00970 of the Standard Specifications modified as follows:

00970.90 Payment, Pay Item – Modify this subsection as follows:

Unit of measurement for Light Pole Foundation shall be “Each”.

End of Section

SECTION 01010 – STORMWATER CONTROL, WATER QUALITY INFILTRATION SWALE

Section 01010, which is not a Standard Specification, is included for this Project by Special Provision.

Description

01010.00 Scope - This work consists of furnishing and installing a water quality Infiltration swale as shown.

Materials

01010.10 Materials - Furnish material meeting the following requirements:

- Water Quality Topsoil 01040.14(e)
- Water Quality Seeding 01030.13
- Water Quality facility planting 01040

01010.12 Water Quality Mixture - Furnish Water Quality Topsoil as described in Section 01040.14(e).

01010.13 Matting - Furnish Type F matting comprised of fully biodegradable woven

jute fibers with material weighing 14 OZ per SY.

Construction

01010.40 General - Construct water quality vegetated infiltration swale facility as shown. Perform excavation, fine grading, and placement work only when the facility area is dry and only from the top of the swale area. Do not stockpile excavated material in the facility area.

Scarify the subsoil area a minimum 12 inches deep. After scarification, place the water quality mixture in maximum 6 inch lifts. Compact each lift with a water filled landscape roller to achieve the net line geometry and dimensions as shown on drawings prior to installation of matting. Install matting in conformance with standard details with top trench, toe trench, check slots and landscape staples as shown.

Maintenance

01010.70 Cleaning - If a stormwater control facility is used for erosion and sediment control, remove all accumulated sediment and debris before completing the facility.

Measurement

01010.80 Measurement - No measurement of quantities will be made for work performed under this Section. The estimated quantities of materials are:

Water Quality Swale Quantities:

Item	Quantity
Area	4,639 Sq. Ft.
Water Quality Mixture	250 Cu. Yd.
Type F Matting	515 Sq. Yd.

Payment

01012.90 Payment - The accepted quantities of work performed under this Section will be paid for at the Contract lump sum amount for the item "Water Quality Swale".

Payment will be payment in full for furnishing and placing all materials, and for furnishing all equipment, labor, and incidentals necessary to complete the work as specified.

End of Section

SECTION 01030 – SEEDING

Comply with Section 01030 of the Standard Specifications.

SECTION 01040 – PLANTING

Comply with Section 01040 of the Standard Specifications.

SECTION 01080 – FLAG SUPPORTS

Section 01080, which is not a Standard Specification, is included for this Project by Special Provision.

Description

01080.00 Scope - This work consists of furnishing and installing vertical pipe sleeves with screw on caps for the purpose of serving a flag supports.

Materials

01080.10 Materials - Furnish material meeting the following requirements:

2-Inch Diameter PVC Pipe 02410.70

01080.11 - 2-inch PVC end cap - Furnish PVC end cap with threaded screw as shown

Construction

01080.40 General - Construct flag supports in concrete sidewalk as shown. Vertically install 2-inch P pipe to a depth of 2 feet below surface. Install threaded pvc plug on top end as shown. Set top of plug level with top of sidewalk.

Maintenance

01080.70 Cleaning – Ensure that threaded plug is operable at project completion.

Payment

01080.90 Payment - The accepted quantities of work performed under this Section will be paid for at the Contract unit price, Each, for “Flag Supports”. Payment will be payment in full for furnishing and placing all materials, and for furnishing all equipment, labor, and incidentals necessary to complete the work as specified.

End of Section

SECTION 01120 – IRRIGATION SYSTEMS

Comply with Section 01120 of the Standard Specifications.