

Route 19 Water System Pump Station

Summit Township Water Authority

**CDS/EPA Community Grant
Funded Project**

August 2025



Justin Cree

241940

SUMMIT TOWNSHIP WATER AUTHORITY OFFICIALS

ADMINISTRATION

Brian Hiles, Manager

Gretchen Hayford, Office Manager

Kathy Hiles, Administrative Secretary

Richard Blakely, Solicitor

ELECTEED OFFICIALS

Anthony Davis, Chairman

Jack Lacey, Vice Chairman

Larry Stevens, Treasurer

Arthur Kurtz, Secretary

Sid Schaefer, Assistant Secretary/Treasurer

ADVERTISEMENT FOR BIDS/PUBLIC NOTICE TO BIDDERS

Sealed bids will be received at the Summit Township Water Authority, 1230 Townhall Road West, Suite 200, Erie, PA 16509 until 12:00 p.m. on September 12, 2025 and will be opened and read immediately thereafter for the

ROUTE 19 WATER SYSTEM PUMP STATION

CDS/EPA COMMUNITY GRANT FUNDED PROJECT

OPINION OF PROBABLE CONSTRUCTION COST: \$312,500.00

COMPLETION DATE: JUNE 5, 2026

The bid specifications, drawings, plan holders list, addenda, and other bid information (**but not the bid forms**) may be viewed and/or downloaded for free via the internet at <https://bids.verdantas.com>. The bidder shall be responsible to check for Addenda and obtain same from the web site.

Bids must be in accordance with drawings and specifications and on forms available from Verdantas, LLC at a non-refundable cost of One Hundred Twenty-Five Dollars (\$125.00) for hard copies **and \$45.00 for electronic files**. Documents may be ordered by registering and paying online at <https://bids.verdantas.com>. Please contact planroom@verdantas.com or call (440) 530-2351 if you encounter any problems viewing, registering or paying for the documents.

There will be a Non-Mandatory Pre-Bid Conference on August 25, 2025 at 10:00 a.m. at the Building with Road Closed sign at the dead end of Old Hershey Rd., Erie, PA 16509.

As security for faithful performance and payment of all obligations under the Contract, the Owner shall require and the successful Bidder shall furnish a Contract Bond (Performance and Payment Bond) in the amount of 100% of the Contract Price. The Contractor and his Surety shall sign the Supplemental Bond Acknowledgement form and submit with the Bid Forms.

This Contract is subject to the provisions, duties, obligations, remedies and penalties of the Steel Product Procurement Act, 73 P.S. §§1881-1887, as amended, which is incorporated herein by reference as if fully set forth herein.

Build America, Buy America Act (BABA) requirements apply

Publish: Erie Times News
August 11, 2025
August 18, 2025

TABLE OF CONTENTS

	<u>Page No.</u>
Title Page	i
Officials Page	ii
Advertisement for Bids/Public Notice to Bidders	iii
Table of Contents	iv - v
SECTION 1 <u>BID DOCUMENTS AND BID FORMS</u>	
Instructions to Bidders	BD.1 – BD.8
Kickbacks from Public Works Employees	BD.9
Build America, Buy America Guidance	BABA.1 – BABA.17
<u>**ALL BID FORMS SHALL BE COMPLETED AND SUBMITTED WITH BID**</u>	
Form of Non-Collusion Affidavit	BF.1
Corporate Resolution	BF.2
Proposed Subcontractors	BF.3
Experience Record	BF.4
Insurance Agent Affidavit	BF.5
Supplemental Bond Acknowledgement	BF.6
Bid Security	BF.7
Workmen's Compensation Act	BF.8
Equal Employment Opportunity	BF.9 – 12
Non-Segregated Facilities	BF.13
Employment Eligibility Verification Compliance Form	BF.14
Evidence of Authority to do Business in the State	BF.15
Bidder's State Contractor's License	BF.16
Proposal Forms	BF.17 – BF.18
American Iron and Steel Acknowledgement	AIS.1
Build America, Buy America (BABA) Acknowledgement	BABA.1
SECTION 2 <u>CONTRACT FORMS</u>	
Notice of Award	CF.1
Contract and Certificates of Fiscal Officer & Legal Counsel	CF.2 – CF.3
Contract Bond, Certificates of Insurance & Worker's Comp.	CF.4
Notice to Proceed	CF.5
Public Work Employment Verification Act	CF.6 – CF.7
Byrd Anti-Lobbying Amendment Certification	BAL.1
Findings for Recovery & Notifications	N.1
SECTION 3 <u>GENERAL CONDITIONS, EJCDC No. C-700 (2007)</u>	1 – 68
SECTION 4 <u>SUPPLEMENTARY CONDITIONS</u>	SC.1 – SC.8

SECTION 5 SPECIFIC PROJECT REQUIREMENTS

SR.1 – SR.2

SECTION 6 PREVAILING WAGE RATES

DB.1 – DB.10

Federal Prevailing Wage Rate Determination Schedule

6/25

SECTION 1
BID DOCUMENTS

INSTRUCTIONS TO BIDDERS

PART 1 GENERAL

- 1.1 Sealed bids shall be received by the Owner at the location specified and until the time and date specified in the Advertisement for Bids/Public Notice to Bidders.
- 1.2 Each bid shall contain the full name and address of each person or company interested in said bid. If no other person be so interested, the Bidder shall distinctly so state the fact.
- 1.3 Bid forms must be completed in ink or by typewriter. Any corrections to the bid forms prior to submission must be initialed by the person signing the bid. Failure to submit any bid form(s) or other required document(s) may be cause for rejection of the bidder's bid at the sole discretion of the Owner.
- 1.4 Bids by Corporations must be executed in the corporate name by the President, Vice President, or other officer accompanied by evidence of authority to sign and the corporate seal must be affixed and attested by the Secretary on the Corporate Resolution form.
- 1.5 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature.
- 1.6 All names must be typed or printed below the signature.
- 1.7 The bid shall contain an acknowledgment of receipt of all Addenda.
- 1.8 If a Bidder wishes to withdraw his bid prior to the opening of bids, he shall state his purpose in writing to the Owner before the time fixed for the opening, and when reached it shall be handed to him unread.
- 1.9 After the opening of bids, no Bidder may withdraw his bid for a period of 60 days.

PART 2 EXAMINATION OF CONTRACT DOCUMENTS AND SITE

- 2.1 Before submitting a bid, each Bidder must
 - A. Examine the Contract Documents thoroughly.
 - B. Visit the site to familiarize himself with local conditions that may in any manner affect cost, progress, or performance of the work.
 - C. Familiarize himself with Federal, State, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work.
 - D. Study and carefully correlate Bidder's observations with the Contract Documents.

- 2.2 Reference is made to the Specific Project Requirements for the identification of any reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the work which have been relied upon by the Engineer in preparing the drawings and specifications. Owner will make copies of such reports available to any Bidder requesting them if not made available with the bid documents. These reports are not guaranteed as to accuracy or completeness; nor are they part of the Contract Documents. Before submitting his bid each Bidder will, at his own expense, make such additional investigations and tests as the Bidder may deem necessary to determine his bid for performance of the work in accordance with the time, price and other terms and conditions of the Contract Documents.
- 2.3 Upon request, the Owner will provide each Bidder access to the site to conduct such reasonable investigations and tests as each Bidder deems necessary for submission for his bid.
- 2.4 The lands upon which the work is to be performed, rights-of-way for access thereto, and other lands designated for use by Bidder in performing the work are identified on the Drawings.
- 2.5 The submission of a bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement of this section and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the work.

PART 3 ESTIMATED QUANTITIES

- 3.1 In Unit Price Contracts, the quantities of the work itemized in the bid are approximate only and the bidders are hereby notified that the estimated quantities made by the Engineer are merely for the guidance of the Owner in comparing on a uniform basis all bids received for the work.
- 3.2 The contract quantities, where itemized, are based on plan horizontal and vertical dimensions unless otherwise specified. It is the Contractor's responsibility to verify and determine actual quantities of materials such as pipe, pavement, subgrade, etc. in his ordering materials.
- 3.3 Payments, except for lump sum contracts and except for lump sum items in unit price contracts, will be made to the Contractor only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications. It is understood that the scheduled quantities of work to be done and materials to be furnished for items labeled as "Contingency" may be increased or diminished by any amount and the awarded quantity of all other items may be increased or diminished up to 15% without in any way invalidating the bid unit prices.
- 3.4 The successful Bidder will be required to furnish the Owner with a complete breakdown of the lump sum bid items, to the satisfaction of the Engineer/Architect, before signing the Contract documents.

PART 4 CONTRACTOR'S QUALIFICATION

- 4.1 Bidder shall provide detailed information relating to similar projects completed within the past 5 years which demonstrates the bidder's capability, responsibility, experience, skill, and financial standing to undertake this type of project and shall include a list of all projects currently under construction including status and contact person.
- 4.2 Bidder shall own, have rental or lease agreements for, or otherwise have readily available any and all equipment and tools necessary for proper execution of the work. The Owner reserves the right to request lists of equipment or tools available for the project including sources.
- 4.3 Bidder shall provide pertinent information to the Owner relative to any pending suits or outstanding liens. If no information is provided by the Bidder, the Owner shall assume that any such suits or liens do not exist.
- 4.4 The Owner may require similar information on any or all subcontractors proposed by the Bidder.

PART 5 SUBCONTRACTORS

- 5.1 The Bidder shall state on the appropriate bid form the names of all Subcontractors proposed and the items of work they are to be assigned. All work not assigned to a Subcontractor shall be assumed by the Owner to be performed by the Bidder.
- 5.2 The Owner reserves the right to approve all subcontractors proposed by the Bidder. If the Owner, after due investigation, rejects the use of a proposed subcontractor, the apparent successful Bidder may either submit an acceptable substitution without increase in bid price or decline substitution and withdraw his bid without sacrificing his bid security. Any listed subcontractor to whom the Owner does not make written objection prior to award of contract, shall be deemed acceptable to the Owner.
- 5.3 Requests for changes of Subcontractor by the Bidder after the award shall be subject to the Owner's approval and shall not change the contract bid prices.
- 5.4 No contractor shall be required to employ any Subcontractor, person or organization against whom he has reasonable objection.

PART 6 BID REVIEW BY OWNER

- 6.1 The Owner reserves the right to reject any and all bids, to waive as an informality any and all irregularities, and to disregard all nonconforming, nonresponsive or conditional bids.
- 6.2 All extensions and totals of unit prices and quantities submitted as part of the bid shall be considered informal until verified by the Owner. All bids must be made on the forms contained herein and the bid prices must be written therein, in figures only. Unit prices shall be separately written for "Unit Price Labor," "Unit Price Material," and "Total Unit Price" for each item listed. Should an error in addition and/or multiplication

be determined while checking the Contractor's math and verifying his total bid, the "Unit Price Labor" and the "Unit Price Material" figures shall govern in determining the correct "Total Unit Price" and the correct "Item Total."

- 6.3 Each bidder must bid on all Items, Alternates, Deductions, and Additions contained in the Bidding Forms. All bids not in conformity with this notice may be considered non-responsive and may be rejected.
- 6.4 In evaluating bids, the Owner may consider:
 - A. The qualifications and experience of the Bidder, proposed subcontractors, and principal material suppliers as outlined in the plans and specifications.
 - B. Financial ability and soundness of the Bidder and proposed subcontractors.
 - C. Completeness of all bid forms and bid requirements.
 - D. Alternates and unit prices requested in the Bid Forms.
 - E. Unit prices or schedules of values that are or appear to be unbalanced.
 - F. Previous contractual experience with the Owner.
 - G. Whether or not the bid package complies with the prescribed requirements.
 - H. The proposed completion date, if applicable.
 - I. Any other matter allowed by law or local ordinance or resolution.
- 6.4 Owner may conduct further investigations as he deems necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications, and financial ability of the Bidders, proposed Subcontractors, and other persons and organizations to do the work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.
- 6.5 Owner reserves the right to reject the bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.
- 6.6 The Contract award shall be based on the lowest and best bid or lowest responsive and responsible bid (as applicable for the public contracting agency receiving bids) for the base bid and selected alternate items (if any) for this project.

PART 7 BID SECURITY

- 7.1 Each bid must be accompanied by a certified or cashier's check in the amount of 10% of the amount bid, an irrevocable letter of credit in the amount of 10% of the amount bid or an original bid bond in the amount of 10% of the amount bid. The certified or cashier's check, or irrevocable letter of credit shall be from a financial institution authorized to transact business in the State of Pennsylvania and acceptable to the Owner. The bond shall be

underwritten by a Surety Company authorized to transact business in the State of Pennsylvania and listed on the most current Department of the Treasury Circular 570, "Surety Companies Acceptable on Federal Bonds."

If bid security is made by bond, the Bidder and his Surety shall sign the Supplemental Bond Acknowledgement form and submit with his bid.

- 7.2 The certified or cashier's check, irrevocable letter of credit, or bond shall be made payable to the Owner and shall serve as a guarantee that in the event the bid is accepted and a contract is awarded to the successful Bidder, the contract will be executed by the bidder including any certifications, certificates or additional bonds required by the contract.
- 7.3 Failure on the part of the successful Bidder to execute the contract documents will cause the certified or cashier's check, irrevocable letter of credit, or bond to be forfeited to the Owner as damages.
- A. If the Owner awards the contract without rebidding, the Bidder (and the Surety on his bond if a bond was submitted) shall be liable to the Owner for a penal sum not to exceed the difference between the low bid and the next lowest bidder or 10% of the amount of the bid, whichever is less.
- B. If the Owner does not award the Contract to the next lowest Bidder, but resubmits the project for bidding; the Bidder (and the Surety on his bond if a bond was submitted) shall be liable to the Owner for a penal sum not to exceed the costs in connection with the resubmission of bids or 10% of the amount of the bid, whichever is less.
- 7.4 Checks or letters of credit for bid security of all bidders will be returned upon execution of the contract.

PART 8 CONTRACT BOND

- 8.1 As security for faithful performance and payment of all obligations under the Contract, the Owner shall require and the successful Bidder shall furnish a Contract Bond (Performance and Payment Bond) in the amount of 100% of the Contract Price. The Contractor and his Surety shall sign the Supplemental Bond Acknowledgement form and submit with the Bid Forms.
- 8.2 The bond shall be underwritten by a Surety Company authorized to transact business in the State of Pennsylvania and listed on the most current Department of the Treasury Circular 570, "Surety Companies Acceptable on Federal Bonds."
- 8.3 The contract bond shall cover correction of the work for the period stated in the specifications and the correction period shall start upon Final Acceptance of the entire project and final payment by the Owner.

- 8.4 Nothing in the performance of the Engineer's service to the Owner in connection with this project shall in any way imply any undertaking for the benefit of the successful Bidder, its subcontractor(s), or the surety of any of them.

PART 9 AWARD AND EXECUTION OF CONTRACT

- 9.1 After the Owner's legislative body awards the project, the successful bidder will receive the unsigned contract documents. Within 10 days after their receipt, the successful Bidder shall sign and deliver to the Owner said contract documents including any certifications, certificates, or additional bonds required by the contract.
- 9.2 The Owner shall execute the Contract within 60 days after the day of the bid opening. When necessary and by mutual consent between the Owner and the Successful Bidder, this 60-day period may be extended.
- 9.3 The date of the Owner's signature on the Contract Agreement shall be the effective contract date.
- 9.4 The Owner shall execute and deliver to the successful Bidder one set of fully executed contract documents.

PART 10 INSURANCE

- 10.1 Verification of limits for public liability, property damage, automobile, Worker's Compensation, or any other insurance required by the provisions of this Contract must be submitted to the Owner prior to execution of the Contract.
- 10.2 All insurance shall be endorsed so that it cannot be cancelled for non-payment of premium for 10 days or cancelled or non-renewed for any other reason in less than 30 days after a written notice of such proposed action by the insurer is given to the Owner. The cancellation clause on the Certificate(s) of Insurance shall read as specified in the Supplementary Conditions and failure to submit an insurance certificate and/or policy endorsement verifying same shall be reason for the Owner to consider the Contractor non-responsive in complying with the requirements for contract execution and may be cause for forfeiture of the Bid Security to Owner.
- 10.3 The Contractor's Liability Insurance policy(s) shall be endorsed such that limits are on a Per Project basis.
- 10.4 The Contractor shall also provide an Owner's and Contractor's Protective Policy.

PART 11 NON-COLLUSION AFFIDAVIT

- 11.1 Each bid must be accompanied by a completed Noncollusion Affidavit provided within the contract documents.
- 11.2 Where there is reason to believe collusion or combination among bidders exists, the Owner reserves the right to reject the bid of those concerned.

PART 12 DELINQUENT PERSONAL PROPERTY STATEMENT

- 12.1 Included with the contract documents is a Delinquent Personal Property Statement to be filled out by the successful Bidder.
- 12.2 The statement shall be sent to both the County Auditor and the County Treasurer. A signed copy shall remain in the contract documents as well.

PART 13 ORIGINAL DOCUMENTS

- 13.1 All bid forms, contract forms, bonds and any other bid documents or contract documents requiring signatures shall be submitted with original signatures. No photo copies or faxed copies of signed documents shall be accepted.

PART 14 ADDENDA

- 14.1 The bidder shall be responsible to obtain Addenda from the web at <https://bids.verdantas.com>.

END OF SECTION 07/28/25 PA

TITLE 18, U.S.C. , SECTION 874

KICKBACKS FROM PUBLIC WORKS EMPLOYEES

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 18, 2022

M-22-11

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Shalanda D. Young
Director

SUBJECT: Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52. The Act strengthens Made in America Laws¹ and will bolster America’s industrial base, protect national security, and support high-paying jobs. The Act requires that no later than May 14, 2022—180 days after the enactment of the IIJA—the head of each covered Federal agency² shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”³

The Act affirms, consistent with Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America’s Workers* (“the Executive Order”), this Administration’s priority to “use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States.”⁴

The Act provides statutory authorities for the Made in America Office (“MIAO”) in the Office of Management and Budget (“OMB”) to maximize and enforce compliance with Made in

¹ “Made in America Laws” means all statutes, regulations, rules, and Executive Orders relating to Federal financial assistance awards or Federal procurement, including those that refer to “Buy America” or “Buy American,” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States. Made in America Laws include laws requiring domestic preference for maritime transport, including the Merchant Marine Act of 1920 (Pub. L. No. 66-261), also known as the Jones Act. Exec. Order No. 14,005, 86 Fed. Reg. 7475, § 2(b) (Jan. 28, 2021), *available at* <https://www.federalregister.gov/documents/2021/01/28/2021-02038/ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers>. Made in America Laws also include laws that give preference to Indian-owned and -controlled businesses, such as the Buy Indian Act (25 U.S.C. 47), that produce items in the United States.

² For the purposes of this guidance, the terms “Federal agency” and “agency” mean any authority of the United States that is an “agency” (as defined in section 3502 of title 44, United States Code), other than an independent regulatory agency (as defined in that section). IIJA, § 70912(3).

³ IIJA, § 70914(a).

⁴ Exec. Order No. 14,005 (see footnote 1).

America Laws.⁵ MIAO aims to increase reliance on domestic supply chains and reduce the need for waivers through a strategic process aimed at: achieving consistency across agencies; gathering data to support decision-making to make U.S. supply chains more resilient; bringing increased transparency to waivers in order to send clear demand signals to domestic producers; and concentrating efforts on changes that will have the greatest impact.⁶

This memorandum provides implementation guidance to Federal agencies on the application of: (1) a “Buy America” preference⁷ to Federal financial assistance programs for infrastructure; and (2) a transparent process to waive such a preference, when necessary. A Federal financial assistance program for infrastructure is any program under which an award may be issued for an infrastructure project, regardless of whether infrastructure is the primary purpose of the award. The term “project” means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States.⁸

Agencies should determine how this guidance is best applied to their infrastructure programs and processes, and consult with OMB, as needed, on establishing criteria, processes, and procedures for applying a Buy America preference and issuing waivers. OMB may update or provide additional guidance, as appropriate, to further assist agencies in the implementation of a Buy America preference.

I. Application of a Buy America Preference

By May 14, 2022, agencies must ensure that all applicable programs comply with section 70914 of the Act, including by the incorporation of a Buy America preference in the terms and conditions of each award with an infrastructure project.⁹ The Act requires the following Buy America preference:

- (1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

⁵ IJA, § 70923(a) & (b)(1).

⁶ OMB Memorandum M-21-26, Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws available at: <https://www.whitehouse.gov/wp-content/uploads/2020/11/M-21-06.pdf>

⁷ For the purposes of this guidance, a “Buy America” preference is a domestic content procurement preference as defined in IJA, § 70912(2).

⁸ IJA, § 70912 (5) & (7).

⁹ See Appendix I: Example of Award Term - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials.

- (3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.^{10, 11}

II. Applicability to Federal Financial Assistance Programs

This guidance applies to all Federal financial assistance as defined in section 200.1 of title 2, Code of Federal Regulations¹²—whether or not funded through IIJA—where funds are appropriated or otherwise made available and used for a project for infrastructure. Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans, loan guarantees, and other types of financial assistance. The term “non-Federal entity” includes States, local governments, territories, Indian tribes, Institutions of Higher Education (IHE), and nonprofit organizations.¹³

For purposes of this guidance, for-profit organizations are not considered non-Federal entities. However, this guidance does not alter independent statutory authorities that agencies may have to include domestic content requirements in awards of Federal financial assistance issued to for-profit organizations.

Federal agencies are encouraged to consult with OMB if they are uncertain about the applicability of this guidance to any particular infrastructure program.

Before applying a Buy America preference to a covered program that will affect Tribal communities, Federal agencies should follow the consultation policies established through Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, and consistent with policies set forth in the Presidential Memorandum of January 26, 2021, on Tribal Consultation and Strengthening Nation-Nation Relationships. Federal agencies should commence consultation promptly.

This guidance does not apply to “expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.”¹⁴ “[P]re and post disaster or emergency response expenditures” consist of expenditures for financial assistance that are (1) authorized by statutes other than the Stafford Act, 42 U.S.C. §§ 5121 et seq., and (2) made in anticipation of or response to an event or events that qualify as an “emergency” or “major disaster” within the meaning of the Stafford Act, *id.* § 5122(1), (2). Awards made to support the construction or improvement of infrastructure to mitigate the damage that may be caused by a non-imminent future emergency or disaster, such as awards

¹⁰ IIJA, § 70912 (2) & (6)(B)(ii).

¹¹ See Section VIII. of this guidance for more information on construction materials.

¹² IIJA § 70912(4)(A)

¹³ See 2 C.F.R. § 200.1.

¹⁴ IIJA § 70912(4)(B)

made under FEMA’s Flood Mitigation Assistance program,¹⁵ do not qualify as “pre and post disaster or emergency response expenditures.”

Subawards should conform to the terms and conditions of the Federal award from which they flow.¹⁶

The IIJA’s definition of “infrastructure” encompasses public infrastructure projects. Thus, the term “infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property.¹⁷ Agencies should treat structures, facilities, and equipment that generate, transport, and distribute energy - including electric vehicle (EV) charging - as infrastructure.

When determining if a program has infrastructure expenditures, Federal agencies should interpret the term “infrastructure” broadly and consider the definition provided above as illustrative and not exhaustive. When determining if a particular construction project of a type not listed in the definition above constitutes “infrastructure,” agencies should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer. Projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project. Federal agencies are strongly encouraged to consult with OMB when making such determinations.

Agencies should consult with MIAO regarding their readiness to apply the requirements of the Act to covered programs. Agencies with questions regarding the application of a Buy America preference to agency-specific programs, including questions about the possible use of waivers during adjustment periods as agencies work to implement the Act, are advised to reach out to MIAO for technical assistance and advice.

III. Consistency with International Agreements

Pursuant to section 70914(e) of the Act, this guidance must be applied in a manner consistent with the obligations of the United States under international agreements.

IV. Avoid Unnecessary Disruption

The Act makes clear that its preferences apply to a Federal financial assistance program for infrastructure only to the extent that a domestic content procurement preference as described

¹⁵ See 42 U.S.C. § 4104c.

¹⁶ 2 CFR 200.101 (b) (2)

¹⁷ IIJA, § 70912(5).

in section 70914 of the Act does not already apply to iron, steel, manufactured products, and construction materials.¹⁸ Agencies should consider whether existing domestic content requirements meet the standards in the Act, as described in this memorandum. Agencies must make necessary changes to come into compliance with the Act's requirements, while preserving policies and provisions that already meet or exceed the standards required by the Act. For example, a program in which the standards for iron and steel already meet the standards in the Act may nevertheless be required to adopt new standards for manufactured products and construction materials. Maintaining current policies where appropriate avoids unnecessary disruption to programs, or elements of programs, that already meet or exceed Build America, Buy America requirements.

V. Effective Date for Awards

Agencies must ensure that, starting on May 14, 2022, all Federal financial assistance programs for infrastructure comply with the requirements of section 70914 of the Act. Therefore, new awards made on or after May 14, 2022, must take appropriate steps to ensure financial assistance awards comply with these requirements, which may include appropriate terms and conditions¹⁹ incorporating a Buy America preference. Renewal awards and amendments obligating additional funds to existing awards that are executed on or after May 14, 2022, must also include a Buy America preference. This means that agencies must include a Buy America preference in awards issued on or after May 14, 2022, even if Notices of Funding Opportunities for those awards did not include a Buy America preference. In these cases, agencies may consider whether public interest waivers may be needed to avoid undue increases in the time and cost of a project. Similarly, public interest waivers may be needed for awards and amendments made on or after May 14, 2022, where budgets for purchase of covered materials have already been agreed upon (including if materials have been ordered and construction has begun). Consistent with the guidance provided below, agencies should issue waivers judiciously and clearly communicate to recipients the limitations and conditions of any such waivers.

VI. Articles, Materials, and Supplies for Infrastructure

A Buy America preference, as defined in section I of this guidance, only applies to the iron and steel, manufactured products, and construction materials used for the infrastructure project under an award. If an agency has determined that no funds from a particular award under a covered program will be used for infrastructure, a Buy America preference does not apply to that award. Similarly, for a covered program, a Buy America preference does not apply to non-infrastructure spending under an award that also includes a covered project. A Buy America preference applies to *an entire infrastructure project*, even if it is funded by both Federal and non-Federal funds under one or more awards.

A Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply

¹⁸ IIJA, § 70917(a) &(b).

¹⁹ See Appendix I: Example of Award Term - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials for exemplary language.

to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of or permanently affixed to the structure.

For the purposes of this guidance, an article, material, or supply should only be classified into *one* of the following categories: (1) iron or steel; (2) a manufactured product; or (3) a construction material. For ease of administration, an article, material, or supply should not be considered to fall into multiple categories. Agencies should apply the iron and steel test to items that are predominantly iron or steel, unless another standard applies under law or regulation.

Any waivers from these requirements must be in writing and meet the requirements of section 70914(b).

VII. Issuing Buy America Waivers

Pursuant to Section 70914(c) of the Act, the head of a Federal agency may waive the application of a Buy America preference under an infrastructure program in any case in which the head of the Federal agency finds that—

- (1) applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”);
- (2) types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”).

Federal agencies are responsible for processing and approving all waivers, including waivers requested by recipients and on behalf of subrecipients. To the greatest extent practicable, waivers should be targeted to specific products and projects.²⁰

Before issuing a waiver, the head of the Federal agency must make publicly available on the agency’s website a detailed written explanation for the proposed determination to issue the waiver and provide at least 15 days for public comment on the proposed waiver.²¹ General applicability waivers are subject to a minimum 30-day public comment period.²² By April 29, 2022, agencies should provide the website address where they will be posting proposed waivers for public comment to MBX.OMB.MadeInAmerica@omb.eop.gov. Pursuant to sections 70914(c) and 70937 of the Act, the waiver must be cross-posted to a centralized waiver transparency website managed by GSA, [BuyAmerican.gov](https://www.buyamerican.gov),²³ no later than November 15, 2022.

²⁰ See Section VII of this guidance for information on waiver principles and criteria.

²¹ Executive Order, § 4(b)(i)(2); IJJA, § 70914(c); IJJA, § 70937 (note that “Buy American” as used in this section also refers to Buy America preferences, per IJJA, § 70932(1)).

²² IJJA § 70914(d)(2)(A)(ii). See Section VII of this guidance for information on general applicability waivers.

²³ [BuyAmerican.gov](https://www.buyamerican.gov) redirects to [MadeInAmerica.gov](https://www.madeinamerica.gov).

To minimize duplication and promote efficiency, MIAO and GSA will coordinate with agencies on the expansion of the existing website's functionality to display waivers for Federal financial assistance and provide further instructions to agencies as necessary.

Federal agencies are responsible for performing due diligence and approving or rejecting waivers consistent with the Act, this guidance, and any other applicable Buy America laws. Federal agencies should notify MIAO in advance of posting an award- or project-level proposed waiver for public comment. However, Federal agencies must consult with MIAO for proposed waivers with broader applicability (such as a general applicability waiver) before posting them for public comment. The purpose of the consultation is to identify any opportunities to structure the waiver in order to maximize the use of goods, products, and materials produced in the United States to the greatest extent possible consistent with law. Federal agencies should send proposed waivers for review to MBX.OMB.MIAwaivers@omb.eop.gov.

Federal agencies must submit to MIAO a proposed waiver for review after the public comment period has concluded. MIAO will review the proposed waiver to determine if it is consistent with applicable law and policy,²⁴ and will notify the Federal agency of its determination.

All waiver requests must include a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States²⁵ and a certification that there was a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers.²⁶ In addition, at a minimum and to the greatest extent practicable, each proposed waiver submitted to MIAO should include the following information, as applicable:

- Waiver type (nonavailability, unreasonable cost, or public interest)
- Recipient name and Unique Entity Identifier (UEI)
- Federal awarding agency organizational information (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code)
- Financial assistance listing name and number
- Federal financial assistance program name
- Federal Award Identification Number (FAIN) (if available)
- Federal financial assistance funding amount
- Total cost of infrastructure expenditures, including all Federal and non-Federal funds (to the extent known)
- Infrastructure project description and location (to the extent known)
- List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, country(ies) of origin (if known), and relevant PSC and NAICS code for each.
- A certification that the Federal official or assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.

²⁴ Executive Order, § 4(c).

²⁵ IIJA, § 70937(c)(2)(A).

²⁶ IIJA, § 70937(c)(2)(D).

- A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach), by the Federal awarding agency and, in the case of a project or award specific waiver, by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
- Anticipated impact if no waiver is issued.
- Any relevant comments received through the public comment period.

The purpose of the information is to ensure that the agency has adequate information to perform due diligence, that MIAO has sufficient information to determine whether the proposed waiver is consistent with law and policy, and that sufficient information is available for public review. Information provided for public review should help interested manufacturers gauge the demand for products for which agencies are considering waiving a Buy America preference.

To avoid a need for duplicative waiver requests from entities that receive funding for one infrastructure project through multiple Federal agencies, the Federal agency contributing the greatest amount of Federal funds for the project should be considered the “Cognizant Agency for Made in America” and should take responsibility for coordinating with the other Federal awarding agencies. Such coordination will provide uniform waiver criteria and adjudication processes, minimize duplicative efforts among Federal agencies, and reduce burdens on recipients. The Cognizant Agency for Made in America shall be responsible for consulting with the other Federal awarding agencies, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to MIAO.

a. Exceptions for Unforeseen and Exigent Circumstances

In limited situations where there is an urgent need in an unforeseen and exigent circumstance, agencies have the authority to waive the application of Buy America preferences without submitting the waiver for public comment and MIAO determination.²⁷ As an exception to the public transparency requirements of the Act, agencies should exercise that authority only when necessary. Further, to ensure MIAO can fulfill its role as a central and transparent source of Made in America waivers, an agency that issues a waiver without first seeking public comment and MIAO approval must, within 30 days of the waiver’s issuance, submit a report to MIAO explaining its reliance upon the “unforeseen and exigent circumstance” exception.²⁸ MIAO will provide further instructions to agencies on how to submit those reports. Although public posting and MIAO review may be waived in exigent circumstances, agencies remain responsible for performing due diligence appropriate to the circumstances, consistent with the principles and criteria in paragraphs VII(b) and (c) below.

²⁷ IIIA, § 70937(b)(2).

²⁸ This reporting process was established pursuant to Executive Order 14,005, § 4(d) and OMB Guidance on Improving the Transparency of Made in America Waivers available at: <https://www.whitehouse.gov/wp-content/uploads/2021/10/Guidance-Memo-Improving-the-Transparency-of-Made-in-America-Waivers.pdf>.

b. *Waiver Principles and Criteria*

To ensure they are scrupulously monitoring, enforcing, and complying with applicable Buy America Laws and minimizing the use of waivers,²⁹ agencies must apply standard criteria to determine whether to grant a waiver in a given circumstance. Agencies with existing criteria must review it for consistency with this guidance and update it as appropriate. All other agencies must establish criteria.

Agencies may reject or grant waivers in whole or in part. To the greatest extent practicable, waivers should be issued at the project level and be product-specific. Overly broad waivers undermine market signals designed to boost domestic supply chains, particularly for key articles, materials and supplies in critical supply chains (i.e., critical supply chains identified in Executive Order 14017, *America's Supply Chains*). When necessary, agencies may consider issuing a waiver that has applicability beyond a single project; however, agencies should always issue, construe, and apply waivers to ensure the maximum utilization of goods, products, and materials produced in the United States, consistent with applicable law. Federal agencies may consult with MIAO when establishing or modifying criteria for granting waivers. They may also work within the Made in America Council, a practice that will help to foster consistency across agencies to the greatest extent practical and appropriate, given agency and program missions.

Federal agencies should use the following principles before issuing a waiver of any type:

- **Time-limited:** In certain limited circumstances, a Federal agency may determine that a waiver should be constrained principally by a length of time, rather than by the specific projects to which it applies. Waivers of this type may be appropriate, for example, when an item that is “nonavailable” is widely used in projects funded by a particular program’s awards. When issuing such a waiver, the agency should identify a short, definite time frame (e.g., no more than one to two years) designed to ensure that, as domestic supply becomes available, domestic producers will have prompt access to the market created by the program.
- **Targeted:** Waivers that are not limited to particular projects should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) necessary. Waivers that are overly broad will tend to undermine domestic preference policies. Broader waivers will receive greater scrutiny from MIAO.
- **Conditional:** Federal agencies are encouraged to issue waivers with specific conditions that support the policies of the Act and the Executive Order.

These principles and criteria should be viewed as minimum requirements for the use of waivers by Federal agencies.³⁰

Nonavailability Waivers

Before granting a nonavailability waiver, agencies should consider whether the recipient has performed thorough market research, which may be accomplished with assistance from the agency, and adequately considered, where appropriate, qualifying alternate items, products, or

²⁹ IJA § 70933(2).

³⁰ See Section IV. of this guidance for agencies that have existing regulations or guidance.

materials. Waivers should describe the market research activities and methods to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources. Agencies are encouraged to engage with the Made in America Council to develop resource lists for common items, goods, or materials.

Unreasonable Cost Waivers

An unreasonable cost waiver is available if the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. Before granting an unreasonable-cost waiver, to the extent permitted by law, agencies should ensure the recipient has provided adequate documentation that no domestic alternatives are available within this cost parameter. Agencies may assist recipients in gathering documentation.

For requests citing unreasonable cost as the statutory basis of the waiver, the waiver justification must include, as applicable, a comparison of the cost of the domestic product to the cost of the foreign product or a comparison of the overall cost of the project with domestic products to the overall cost of the project with foreign-origin products, pursuant to the requirements of the applicable Made in America law.³¹ Publicly available cost comparison data may be provided in lieu of proprietary pricing information.³² Unreasonable-cost waivers should be no broader than necessary.

Public Interest Waivers

A waiver in the public interest may be appropriate where an agency determines that other important policy goals cannot be achieved consistent with the Buy America requirements established by the Act and the proposed waiver would not meet the requirements for a nonavailability or unreasonable cost waiver. Such waivers shall be used judiciously and construed to ensure the maximum utilization of goods, products, and materials produced in the United States.³³ To the extent permitted by law, determination of public interest waivers shall be made by the head of the agency with the authority over the Federal financial assistance award.³⁴

Public interest waivers may have a variety of bases. As with other waivers, they should be project-specific whenever possible, as what is in the public interest may vary depending upon the circumstances of the project, recipient, and specific items, products, or materials in question.

Federal agencies may wish to consider issuing a limited number of general applicability public interest waivers in the interest of efficiency and to ease burdens for recipients. The agency remains responsible for determining whether such a waiver is appropriate to apply to any

³¹ IIJA, § 70937(c)(2)(B).

³² IIJA, § 70937(c)(2)(B).

³³ IIJA, § 70935(a).

³⁴ IIJA, § 70935(b).

given project; the Made in America Office will not review each application of such a waiver. The following are examples of types of public interest waivers an agency may consider issuing.³⁵

- **De Minimis:** Ease of administration is important to reduce burden for recipients and agencies. Federal agencies may consider whether a general applicability public interest waiver should apply to infrastructure project purchases below a de minimis threshold. An agency may consider whether a public interest waiver should apply when necessary to ensure that recipients and Federal agencies make efficient use of limited resources, especially if the cost of processing the individualized waiver(s) would risk exceeding the value of the items waived. Agencies may consider adopting an agency-wide public interest waiver that sets a de minimis threshold, for example, of 5 percent of project costs up to a maximum of \$1,000,000.
- **Small Grants:** Agencies may wish to consider whether it is in the public interest to waive application of a Buy America preference to awards below the Simplified Acquisition Threshold. This type of waiver may be particularly relevant in the initial years after enactment of IIJA, and may be phased out over time as agencies develop efficient waiver review capabilities.
- **Minor Components:** Agencies may wish to consider whether it is in the public interest to allow minor deviations for miscellaneous minor components within iron and steel products. A minor components waiver in the public interest may allow non-domestically produced miscellaneous minor components comprising no more than 5 percent of the total material cost of an otherwise domestically produced iron and steel product to be used. It would not be in the public interest to use a minor components waiver to exempt a whole product from the iron and steel requirements, or to allow the primary iron or steel components of the product to be produced other than domestically.
- **Adjustment Period:** Agencies should consider whether brief, time limited waivers to allow recipients and agencies to transition to new rules and processes may be in the public interest.
- **International Trade Obligations:** If a recipient is a State that has assumed procurement obligations pursuant to the Government Procurement Agreement or any other trade agreement, a waiver of a Made in America condition to ensure compliance with such obligations may be in the public interest.
- **Other Considerations:** A waiver may be in the public interest in one circumstance, but not in another, and considerations will depend upon the nature and amount of resources available to the recipient, the value of the items, goods, or materials in question, the potential domestic job impacts, and other policy considerations, including sustainability, equity, accessibility, performance standards, and the domestic content (if any) of and conditions under which the non-qualifying good was produced.

All proposed waivers citing the public interest as the statutory basis must include a detailed written statement, which shall address all appropriate factors, such as potential

³⁵ The list is not exhaustive and no agency is required to issue the types of waivers noted as examples. As with other general applicability waivers, generally applicable public interest waivers must be reviewed at least every five years and more often as appropriate.

obligations under international agreements, justifying why the requested waiver is in the public interest.³⁶

Before granting a waiver in the public interest, to the extent permitted by law, agencies shall assess whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products.³⁷ Agencies may consult with the International Trade Administration (ITA) in making this assessment if the granting agency deems such consultation to be helpful. The agency shall integrate any findings from the assessment into its waiver determination as appropriate.³⁸ MIAO will work with ITA and agencies to develop standard processes to expedite this required assessment, such as by ensuring agencies know how to easily access lists of dumped or injuriously subsidized products.

c. General Applicability Waivers

The term “general applicability waiver” refers to a waiver that applies generally across multiple awards. A general applicability waiver can be “product-specific” (e.g., applies only to a product or category of products) or “non-product specific” (e.g., applies to all “manufactured products”).

General applicability waivers should be issued only when necessary to advance an agency’s missions and goals, consistent with IJJA, the Executive Order, and this guidance. For example, an agency might issue a general waiver for a product for which there are well-established domestic sourcing challenges. General applicability waivers will require appropriate justification from the Federal agency.

Federal agencies with one or more existing general applicability waivers, including public interest waivers, must review such waivers within five years of the date on which the waiver was issued. Agencies issuing new general applicability waivers must review such waivers at least every five years from the date of issuance. Agencies are encouraged to review general applicability waivers more frequently, when appropriate. In conducting a review of any general applicability waiver, the head of a Federal agency shall—

- (A) publish in the *Federal Register* a notice that—
 - (i) describes the justification for a general applicability waiver; and
 - (ii) requests public comments for a period of not less than 30 days on the continued need for a general applicability waiver; and
- (B) publish in the *Federal Register* a determination on whether to continue or discontinue the general applicability waiver, considering the comments received in response to the notice published under paragraph (A).³⁹

³⁶ IJJA, § 70937(c)(2)(C).

³⁷ Executive Order, § 5.

³⁸ Executive Order, § 5.

³⁹ IJJA, § 70914(d)(1) & (2).

For a period of five years beginning on the date of enactment of the Act, paragraphs (A) and (B) above shall not apply to any product-specific general applicability waiver that was issued more than 180 days before November 15, 2021.⁴⁰

By no later than November 15, 2022, agencies with existing, non-product specific general applicability waivers that were issued more than five years before November 15, 2021 should promptly commence review of each such waiver by publishing a *Federal Register* notice as required in section 70914(d)(2)(A) of the IIJA. Should the review justify retaining the waiver, agencies should consider narrowing the waiver in a manner that would support supply chain resilience and boost incentives to manufacture key products domestically, as appropriate.

To ensure prompt commencement of projects funded by IIJA, MIAO plans to work with agencies to expedite consideration of general applicability waivers for products or categories of products for which domestic sourcing challenges have been well documented. Agencies should align such waivers with complementary policies, such as work to boost supply chain resiliency and domestic employment. General applicability waivers should include appropriate expiration dates designed to ensure that, once available, Buy America qualifying products receive appropriate consideration.

VIII. Preliminary Guidance for Construction Materials

For construction materials, the Act requires that, not later than 180 days after November 15, 2021, OMB must issue standards that define the term “all manufacturing processes” in the case of construction materials. These standards must require that each manufacturing process required for the manufacture of the construction material and the inputs of the construction material occurs in the United States. They must also reflect efforts to maximize the direct and indirect jobs benefited or created in the production of the construction material.⁴¹

Although the deadline to issue such guidance has not yet passed, OMB is providing preliminary and non-binding guidance to assist agencies in determining which materials are construction materials so that agencies can begin applying Buy America requirements to those materials. This preliminary guidance addresses the requirements as set forth in section 70915(b) of the IIJA while providing sufficient time for OMB to receive additional stakeholder input.

The IIJA finds that “construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives⁴²—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);

⁴⁰ IIJA, § 70914(d)(3).

⁴¹ IIJA, § 70915(b).

⁴² IIJA, § 70917(c)(1).

- lumber; or
- drywall.⁴³

To provide clarity to item, product, and material manufacturers and processors, we note that items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

Pending OMB's issuance of final standards on construction materials, and absent any existing applicable standard in law or regulation that meets or exceeds these preliminary standards, agencies should consider "all manufacturing processes" for construction materials to include at least the final manufacturing process and the immediately preceding manufacturing stage for the construction material. OMB is seeking additional stakeholder input before issuing further guidance identifying initial manufacturing processes for construction materials that should be considered as part of "all manufacturing processes."

Agencies should consult with MIAO, as needed, to ensure that any waiver issued for construction materials is explicitly targeted and time-limited, in order to send a clear market signal that additional standards for "all manufacturing processes" in the case of construction materials will be forthcoming.

⁴³ See IIIA, § 70911(5).

Appendix I: Example of Award Term - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Where applicable, the Federal agency must include appropriate terms and conditions in all awards, in accordance with applicable legal requirements and its established procedures, in order to effectuate the requirements of the Act and this guidance. The following is sample language.

To achieve the greatest possible consistency across agencies and programs, agencies should send their proposed terms and conditions to MIAO for review prior to incorporating them into applicable awards. Agencies should begin including appropriate language in NOFOs published *before* May 14, 2022 to provide applicants fair notice of the Buy America conditions that will apply to funds obligated on or after that date.

** ** **

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) all construction materials⁴⁴ are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

⁴⁴ Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

Waivers

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

- (a) When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:
- (1) applying the domestic content procurement preference would be inconsistent with the public interest;
 - (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 - (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [\[link to awarding agency web site with information on currently applicable general applicability waivers\]](#).

*Definitions*⁴⁵

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives⁴⁶—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

⁴⁵ Federal agencies may choose to provide definitions on a public-facing website and reference that website in the terms and conditions, rather than including all definitions in the terms and conditions itself. If an agency chooses to do provide definitions on a public-facing website, it is not considered a deviation from the terms and conditions provided and does not need to be reviewed by OMB.

⁴⁶ IIIA, § 70917(c)(1).

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

BID FORMS

The bid forms are not available online. The bid forms are available only by purchasing a set of plans and specifications at the location indicated in the Advertisement for Bids/Public Notice to Bidders.

SECTION 2
CONTRACT FORMS

NOTICE OF AWARD

TO: «ContractName»
«ContractAddr»
«ContractCity», «ContractState» «ContractZip»

PROJECT: «TitleCaps»

You are notified that your Bid which was opened on «Bidopening» has been accepted for items in the amount of «ContractDollars» at the unit bid prices as reflected in the bid tabulation contained herein for the *(fill in awarded parts, i.e. for Base Bid and Alternate C, or delete).*

You are required by the Instructions to Bidders to execute the Agreement and furnish the required Bonds, Certificates of Insurance, and other documents within 10 calendar days from the date of receipt of this Notice.

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

The Owner will return to you one (1) fully signed set of the contract documents.

«OwnerCaps»

«OwnerCEOFirst» «OwnerCEOLast», «OwnerCEOTitle»

ACKNOWLEDGMENT

«ContractCAPName»

«ContractFirst» «ContractLast», «ContractTitle»

CONTRACT

FOR «TitleCaps»

THIS CONTRACT, made and entered into at «OwnerCity», «OwnerState», this _____ day of _____, 20____, by and between the «OwnerMuni» (“OWNER”), «OwnerState» and «ContractName» (“CONTRACTOR”).

WITNESSETH: That the said CONTRACTOR has agreed and by this presents does agree with the OWNER for the consideration hereinafter mentioned and contained, and under penalty expressed in a bond given with these presents, and herein contained or hereunto annexed, to furnish at its own cost and expense, all the necessary tools, equipment, materials, labor, and tests in an expeditious, substantial and workmanlike manner, the equipment and appurtenances herein contemplated, commencing work within 20 days from the date of the Notice to Proceed and executing the work within the time and in the manner specified and in conformity with the requirements set forth in this Contract.

The following form essential parts of the Contract (may vary with project).

1. Advertisement for Bids/Public Notice to Bidders
2. Instruction to Bidders
3. Bid Forms and Proposal
4. Contract Forms and Exhibits
5. Contract Bond – ORC 153.571 or ORC 153.57
6. Contract Provisions
7. General Conditions
8. Supplementary Conditions
9. Specifications
10. Specific Project Requirements
11. Prevailing Wage Rate Schedule
12. Contract Drawings; if any.
13. Addenda; if any.

The CONTRACTOR agrees and understands that the work on this contract shall be subject to the acceptance of the OWNER based upon and in accordance with the contract specifications and contract plans and drawings on file in the office of the OWNER.

The CONTRACTOR agrees that each individual employed by the CONTRACTOR or any Subcontractor and engaged in work on the project under this contract shall be paid by prevailing wage established by the Department of Industrial Relations of the State of Ohio or the U.S. Department of Labor (Davis-Bacon Act) as detailed in the section titled "Wage Rates." This shall occur regardless of any contractual relationship which may be said to exist between the Contractor or any Subcontractor and such individual. ***(if a School District, delete this paragraph)***

The CONTRACTOR shall proceed with the said work in a prompt and diligent manner and shall do the several parts thereof. Further the CONTRACTOR shall complete the whole of said work in accordance with the specifications and contract drawings to the satisfaction of the OWNER on or before the time stated, and in default of completion within the time as fixed, the CONTRACTOR shall pay to the OWNER as liquidated damages, an amount equal to «Liquidated», for each and every day (Sundays and legal holidays excepted) the completion of the work may be delayed beyond the date fixed in the manner and as stipulated.

It is hereby mutually agreed that the OWNER is to pay and the CONTRACTOR is to receive, as full compensation for furnishing all materials and labor in building, constructing and testing and in all respect completing the herein described work and appurtenances in the manner and under the conditions herein specified, the prices stipulated in the proposal herein contained or hereto annexed and the total contract sum is «ContractDollars».

This Contract shall be in full force and effect from the date of execution by the OWNER and CONTRACTOR.

IN WITNESS WHEREOF: The OWNER and CONTRACTOR hereunto affixed their signature the day and year first mentioned above.

«ContractCAPName»

«ContractFirst» «ContractLast», «ContractTitle»

«OwnerCaps»

«OwnerCEOFirst» «OwnerCEOLast», «OwnerCEOTitle»

I hereby certify that funds in the amount of «ContractAmtwords» Dollars («ContractDollars») necessary for the foregoing Contract have been appropriated and are in the Treasury, or are in the process of collection, or are available through grants and/or loans from other funding sources.

«OwnerFiscalFirst» «OwnerFiscalLast», «OwnerFiscalTitle»

APPROVED AS TO FORM:

«OwnerLegalName», «OwnerLegalTitle»

**THE CONTRACTOR SHALL FURNISH THE FOLLOWING ITEMS
WITHIN 10 DAYS OF NOTIFICATION OF AWARD:**

- A) **CERTIFICATE OF INSURANCE FOR
CONTRACTOR'S PUBLIC LIABILITY INSURANCE POLICY**
Owner, Verdantas, LLC & CT Consultants, Inc. Named as Additional Insured

- B) **CERTIFICATE OF INSURANCE FOR
OWNER'S AND CONTRACTOR'S PROTECTIVE POLICY**
Owner Named as Insured (No Additional Insured)

- C) **CERTIFICATE OF WORKER'S COMPENSATION**

- D) **CONTRACT BOND (PERFORMANCE AND PAYMENT BOND)**

NOTICE TO PROCEED

Project: «Title»

Owner: «OwnerMuni»
«OwnerAddr»
«OwnerCity», «OwnerState» «OwnerZip»

To: «ContractName»
«ContractAddr»
«ContractCity», «ContractState» «ContractZip»

Date: _____

You are hereby notified to commence work in accordance with the Contract. All work shall be completed by «Completion_Date».

«OwnerCaps»

«OwnerCEOFirst» «OwnerCEOLast», «OwnerCEOTitle»

PUBLIC WORK EMPLOYMENT VERIFICATION ACT

General. In accordance with Act 127 of 2012, known as the Public Works Employment Verification Act ("the Act"), effective January 1, 2013, 43 P.S. §§167.1-167.11, use the Federal Government's E-Verify system to ensure that all employees performing work on the project, including subcontractor's employees, are authorized to work in the United States.

Verification Form. Verify the employment eligibility of each new employee hired after January 1, 2013 and submit the Commonwealth Public Works Employment Verification Form ("Form") included in the bid package attachments to the Department.

Contractor. Fax the Form, signed by authorized representative of the Contractor, possessing sufficient knowledge to make the representations and certifications in the Form to Contract Awards at 717-705-1504 within 7 days of the bid opening. Failure or refusal to provide the Form will be considered a refusal to comply with bidding requirements, will result in rejection of the bid, and will be subject to the enforcement activities, sanctions and civil penalties specified in the Act.

Subcontractor. Obtain a signed Form from every subcontractor performing work on the project, signed by authorized representative of the subcontractor, possessing sufficient knowledge to make the representations and certifications in the Form and submit it to the Representative when requesting subcontractor approval. Failure or refusal to provide the Form will be considered a refusal to comply with subcontractor approval requirements, will result in rejection of the subcontractor request, and will subject the subcontractor to the enforcement activities, sanctions and civil penalties specified in the Act.

Include information about the requirements of the Act in all the subcontracts.

The Department of General Services is the Commonwealth agency responsible for enforcement and administration of the Act. Please direct questions about the Act to:

Department of General Services Public Works
Employment Verification Compliance Office
Room 105 Tent Building
18th and Herr Streets
Harrisburg, PA 17125
Fax: 717-214-3669



COMMONWEALTH OF PENNSYLVANIA

PUBLIC WORKS EMPLOYMENT VERIFICATION FORM

Date _____

Business or Organization Name (Employer) _____

Address _____

City _____ State _____ Zip Code _____

.....Contractor.....O.....

Contracting Public Body _____

Contract/Project No _____

Project Description _____

Project Location _____

As a contractor/subcontractor for the above referenced public works contract, I hereby affirm that as of the above date, our company is in compliance with the Public Works Employment Verification Act ('the Act') through utilization of the federal E-Verify Program (EVP) operated by the United States Department of Homeland Security. To the best of my/our knowledge, all employees hired post January 1, 2013 are authorized to work in the United States.

It is also agreed to that all public works contractors/subcontractors will utilize the federal EVP to verify the employment eligibility of each new hire within five (5) business days of the employee start date throughout the duration of the public works contract. Documentation confirming the use of the federal EVP upon each new hire shall be maintained in the event of an investigation or audit.

I, _____, authorized representative of the company above, attest that the information contained in this verification form is true and correct and understand that the submission of false or misleading information in connection with the above verification shall be subject to sanctions provided by law.

Authorized Representative Signature

BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned, _____ of _____
(the "Company") hereby certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Company certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Company Authorized Official

Name and Title of Company Authorized Official

Date

THE OWNER OR THEIR AUTHORIZED REPRESENTATIVE SHALL INSERT THE FOLLOWING CONTRACT DOCUMENTATION IN THE EXECUTED CONTRACT:

A1) CHECK FOR SUSPENDED AND DEBARRED CONTRACTORS ON THE PENNSYLVANIA DEPARTMENT OF GENERAL SERVICES LIST
(<https://www.dgs.internet.state.pa.us/debarmentsearch/debarment/index>)

A2) CHECK FEDERAL SAM (System for Award Management) for FEDERAL FUNDING (including sub-contractors), (if applicable)
(<https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf/>)

B) NOTIFICATION OF SURETY AND AGENT OF CONSTRUCTION CONTRACT AWARD (if applicable)

~~C) NOTIFICATION TO UTILITY COMPANIES OF COMMENCEMENT OF CONTRACT EXECUTION (if applicable)~~

SECTION 3
GENERAL CONDITIONS

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 Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

A Practice Division of the

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 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 Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

Copyright © 2007 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
Article 1 – Definitions and Terminology	1
1.01 Defined Terms.....	1
1.02 Terminology	5
Article 2 – Preliminary Matters	6
2.01 Delivery of Bonds and Evidence of Insurance.....	6
2.02 Copies of Documents.....	6
2.03 Commencement of Contract Times; Notice to Proceed.....	6
2.04 Starting the Work	7
2.05 Before Starting Construction	7
2.06 Preconstruction Conference; Designation of Authorized Representatives	7
2.07 Initial Acceptance of Schedules.....	7
Article 3 – Contract Documents: Intent, Amending, Reuse	8
3.01 Intent.....	8
3.02 Reference Standards.....	8
3.03 Reporting and Resolving Discrepancies.....	8
3.04 Amending and Supplementing Contract Documents.....	9
3.05 Reuse of Documents	10
3.06 Electronic Data.....	10
Article 4 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions; Reference Points.....	10
4.01 Availability of Lands	10
4.02 Subsurface and Physical Conditions	11
4.03 Differing Subsurface or Physical Conditions.....	11
4.04 Underground Facilities	13
4.05 Reference Points	14
4.06 Hazardous Environmental Condition at Site.....	14
Article 5 – Bonds and Insurance	16
5.01 Performance, Payment, and Other Bonds	16
5.02 Licensed Sureties and Insurers	16
5.03 Certificates of Insurance	16
5.04 Contractor’s Insurance.....	17
5.05 Owner’s Liability Insurance	18
5.06 Property Insurance	18
5.07 Waiver of Rights	20
5.08 Receipt and Application of Insurance Proceeds.....	21

5.09	Acceptance of Bonds and Insurance; Option to Replace	21
5.10	Partial Utilization, Acknowledgment of Property Insurer	21
Article 6 – Contractor’s Responsibilities		22
6.01	Supervision and Superintendence.....	22
6.02	Labor; Working Hours.....	22
6.03	Services, Materials, and Equipment	22
6.04	Progress Schedule	23
6.05	Substitutes and “Or-Equals”	23
6.06	Concerning Subcontractors, Suppliers, and Others.....	25
6.07	Patent Fees and Royalties	27
6.08	Permits.....	27
6.09	Laws and Regulations	27
6.10	Taxes	28
6.11	Use of Site and Other Areas	28
6.12	Record Documents.....	29
6.13	Safety and Protection	29
6.14	Safety Representative.....	30
6.15	Hazard Communication Programs	30
6.16	Emergencies	30
6.17	Shop Drawings and Samples	30
6.18	Continuing the Work.....	32
6.19	Contractor’s General Warranty and Guarantee.....	32
6.20	Indemnification	33
6.21	Delegation of Professional Design Services	34
Article 7 – Other Work at the Site.....		35
7.01	Related Work at Site	35
7.02	Coordination.....	35
7.03	Legal Relationships.....	36
Article 8 – Owner’s Responsibilities.....		36
8.01	Communications to Contractor.....	36
8.02	Replacement of Engineer.....	36
8.03	Furnish Data	36
8.04	Pay When Due	36
8.05	Lands and Easements; Reports and Tests.....	36
8.06	Insurance	36
8.07	Change Orders.....	36
8.08	Inspections, Tests, and Approvals	37
8.09	Limitations on Owner’s Responsibilities	37
8.10	Undisclosed Hazardous Environmental Condition	37
8.11	Evidence of Financial Arrangements	37
8.12	Compliance with Safety Program.....	37
Article 9 – Engineer’s Status During Construction		37
9.01	Owner’s Representative.....	37
9.02	Visits to Site	37

9.03	Project Representative	38
9.04	Authorized Variations in Work	38
9.05	Rejecting Defective Work	38
9.06	Shop Drawings, Change Orders and Payments.....	38
9.07	Determinations for Unit Price Work	39
9.08	Decisions on Requirements of Contract Documents and Acceptability of Work.....	39
9.09	Limitations on Engineer's Authority and Responsibilities	39
9.10	Compliance with Safety Program.....	40
Article 10	– Changes in the Work; Claims	40
10.01	Authorized Changes in the Work	40
10.02	Unauthorized Changes in the Work	40
10.03	Execution of Change Orders.....	41
10.04	Notification to Surety.....	41
10.05	Claims.....	41
Article 11	– Cost of the Work; Allowances; Unit Price Work	42
11.01	Cost of the Work	42
11.02	Allowances	45
11.03	Unit Price Work	45
Article 12	– Change of Contract Price; Change of Contract Times	46
12.01	Change of Contract Price.....	46
12.02	Change of Contract Times	47
12.03	Delays.....	47
Article 13	– Tests and Inspections; Correction, Removal or Acceptance of Defective Work	48
13.01	Notice of Defects	48
13.02	Access to Work	48
13.03	Tests and Inspections	48
13.04	Uncovering Work.....	49
13.05	Owner May Stop the Work.....	50
13.06	Correction or Removal of Defective Work	50
13.07	Correction Period.....	50
13.08	Acceptance of Defective Work.....	51
13.09	Owner May Correct Defective Work	51
Article 14	– Payments to Contractor and Completion	52
14.01	Schedule of Values.....	52
14.02	Progress Payments	52
14.03	Contractor's Warranty of Title	55
14.04	Substantial Completion.....	55
14.05	Partial Utilization	56
14.06	Final Inspection.....	56
14.07	Final Payment.....	57
14.08	Final Completion Delayed.....	58
14.09	Waiver of Claims	58

Article 15 – Suspension of Work and Termination	58
15.01 Owner May Suspend Work	58
15.02 Owner May Terminate for Cause	58
15.03 Owner May Terminate For Convenience.....	60
15.04 Contractor May Stop Work or Terminate	60
Article 16 – Dispute Resolution	61
16.01 Methods and Procedures	61
Article 17 – Miscellaneous	61
17.01 Giving Notice	61
17.02 Computation of Times	61
17.03 Cumulative Remedies	62
17.04 Survival of Obligations	62
17.05 Controlling Law	62
17.06 Headings.....	62

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 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 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.
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.
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. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *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.
38. *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.
39. *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.

40. *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.
41. *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.
42. *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.
43. *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.
44. *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.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *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 Subcontractor.
48. *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.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *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.
51. *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 words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

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 reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated 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, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the 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 discovers, or has actual knowledge of, 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 (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 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 had actual knowledge 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, or code, or the instruction of any Supplier (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 shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by 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 known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
- 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the 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 officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

- 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
- 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
- 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition 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, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall 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 provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all 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:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the 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 officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for 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. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

- 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 written notice to Contractor: (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, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (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, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition 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 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 or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- 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 and loss payee 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 and loss payee 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.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such 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, be written on an occurrence basis, include as additional insureds (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, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
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 contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. 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);
5. 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
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. 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, members, 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 a loss payee;
 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown 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, members, 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 a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this 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 loss payee 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 this 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 as loss payees (and the officers, directors, members, 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 loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial 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, members, 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 loss payees, 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.

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; and
 - 3) it has a proven record of performance and availability of responsive service.
 - 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 if 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 by 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 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 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; and

- 4) 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 a Change Order in the case of a substitute and 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 so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- 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 create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee 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, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by 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, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

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 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, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any 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. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, 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. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 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 anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and 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 accepted 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:*
 - 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:
 - a. 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;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
 2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review 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

Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

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

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors 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, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 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, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

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 through 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, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and 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 such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. 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 wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful 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 with respect to 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 relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner's responsibilities, if any, with 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 with 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. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

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.

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 believes 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.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

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.D.

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

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times 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 not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, 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, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

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

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

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the

control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors 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. 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, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

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 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, Contractor shall, if requested by Engineer, uncover such Work 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 written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute

resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for 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 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or

- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the 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 remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

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 remove its property and 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, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D 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.6;
 - 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 might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

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 repeated 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 the 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 in which the Project is located.

17.06 *Headings*

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

H:\PRIVATE\SPEC\Ctsparts\GeneralConditions2007.doc

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 ed.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented herein or in the Specific Project Requirements remain in full force and effect.

SC-1.01 The terms used in these Supplementary Conditions which are defined in the General Conditions have the meaning assigned to them in the General Conditions.

SC-2.02 Delete paragraph 2.02(A) in its entirety and insert the following in its place:

Owner shall furnish one (1) printed/hard copy of the drawings and Project Manual which shall be an executed contract set and one set in electronic format (.pdf), if requested.

SC-2.03(A) In the last sentence of 2.03A, change "sixtieth day" to "ninetieth day."

SC-4.02(A) Change "Supplementary Conditions" to read "Specific Project Requirements."

SC-4.06(G) Delete paragraph 4.06(G) in its entirety.

SC-5.03(A)(1) The required Certificate of Insurance shall be in a form satisfactory to the Owner (most current version of ACORD 25 or approved equal). If the Contractor fails to procure and maintain any specified and/or required insurance, the Owner shall have the right to procure and maintain the said insurance for and in the name of the Contractor and the Contractor shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance.

SC-5.04(B)(1) Change "Supplementary Conditions" to read "Specific Project Requirements."

SC-5.04(B)(2) The limits of liability for the insurance required by paragraph 5.04(A) of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

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

- | | |
|--|-------------|
| (a) State | Statutory |
| (b) Applicable Federal (e.g., Longshoreman's): | Statutory |
| (c) Employer's Liability: | \$1,000,000 |

5.04(A)(3), (4) and (5). Contractor's Liability Insurance under paragraphs 5.04(A)(3) through 5.04(A)(5) of the General Conditions which shall also include completed operations and product liability coverage.

- (a) Bodily Injury and Property Damage, Combined Single Limit (CSL)
(Except Products and Completed Operations) Property Damage liability

insurance will provide Explosion, Collapse, and Underground coverage where applicable.

Each Occurrence	\$2,000,000*
-----------------	--------------

General Aggregate	\$4,000,000*
-------------------	--------------

(b) Products and Completed Operations Aggregate	\$1,000,000
---	-------------

Products and Completed Operations to be maintained for two (2) years after final payment and Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period.

(c) Personal and Advertising Injury (Per Person/Organization and per occurrence) with Employment Exclusion deleted.	\$1,000,000
---	-------------

(d) Fire Damage	\$100,000
-----------------	-----------

(e) *Umbrella Excess Liability – As needed to increase primary policy to required limits.

(f) If the General Liability Policy includes a General Aggregate, such policy shall be endorsed to have General Aggregate apply to this project only (Per Project Aggregate Limit).

5.04(A)(6) Automobile Liability - (Owned, Non-Owned, Hired)
Contractor may provide split limits or combined single limit.

(a) Split Limits:

Bodily Injury,	Each Person:	\$2,000,000
	Each Occurrence	\$2,000,000

Property Damage,	Each Occurrence	\$1,000,000
------------------	-----------------	-------------

or

(b) Combined Single Limit

Bodily Injury and Property Damage,	
Each Occurrence	\$2,000,000

(c) Umbrella Excess Liability – as needed to increase Primary Policy to specified limits.

SC-5.04(B)(3) Add the following to the end of the paragraph: “to the extent available in the insurance industry with industry standard exclusions and as allowed under the laws and regulations in the State of Pennsylvania;”

SC-5.04(B)(4) Add the following:

Written notice of cancellation for non-payment of premium shall be at least 10 days.

Add the following section:

SC-5.04(C) Unless otherwise stated in Specific Project Requirements, the Contractor shall purchase and provide an "Owner's and Contractor's Protective Policy" with the Owner listed as the insured for the following limits:

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000

Add the following section:

SC-5.04(D) Unless otherwise stated in Specific Project Requirements the Contractor shall purchase and maintain during the Contract Time "All Risk Builders' Risk Insurance," and/or "Installation Floater Insurance," and/or "Boiler and Machinery Insurance," and any and all insurance requirements of section GC-5.06 of the General Conditions as applicable for the type of work to be performed upon the Project to the full insurable value thereof for the benefit of the Owner, the Contractor, Subcontractors and Suppliers as their interest may appear. This insurance shall cover the work until final acceptance and final payment by the Owner. This provision shall in no way release the Contractor or Contractor's Surety from obligations under the Contract Documents to fully complete the Project. The original policy(s) shall be filed with the Owner or his designated representative.

SC-5.05 *Owner's Liability Insurance*

See SC-5.04(C) above.

SC-5.06 *Property Insurance*

Unless otherwise stated in Specific Project Requirements the Contractor, not the Owner, shall purchase and maintain during the Contract Time all property insurance required in section GC-5.06 of the General Conditions and as outlined in SC-5.04(D) above.

Add the following section:

SC-6.02(C) The Contractor shall be responsible for the Owner and/or Engineer's additional inspection and administrative costs for work performed beyond regular working hours as defined in this Section.

SC-6.07(B) Delete paragraph 6.07(B) in its entirety.

Add the following section:

SC-6.10(B) Add the following:

Should the Owner be exempt from any taxes on labor, materials and/or equipment to be incorporated in the Project, the Contractor shall provide verification of same and said taxes shall not be included in the Contract Price.

The Contractor shall withhold and/or pay all consumer, use, property, employment, income and other taxes in accordance with the laws and regulations of the United States, State of Pennsylvania and Owner which are applicable during the performance of the work.

SC-6.17 *Shop Drawings and Samples*

Add the following new paragraphs immediately after paragraph 6.17(E):

- F. Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than three (3) submittals. Engineer will record Engineer's time for reviewing subsequent materials of shop drawings, samples, or other items requiring approval and Contractor shall reimburse Owner for Engineer's charges for such time.
- G. In the event that Contractor requests a substitution for a previously approved item, Contractor shall reimburse Owner for Engineer's charges for such time unless the need for such substitution is beyond the control of the Contractor.

SC-7.02 Delete Section 7.02 of the General Conditions in its entirety and insert the following:

SC-7.02(A) The General Construction Contractor shall be referred to and defined as the Construction Coordinator.

SC-7.02(B) Duties of the Construction Coordinator include the following:

1. Scheduling and coordinating the work of the Prime Contractors including submission and periodic updating of project schedule.
2. Establishing and administering the site safety program and procedures for the project.
3. See that permits are applied for and obtained on a timely basis. Advise the Engineer of any problems related to permit approval.
4. Monitoring compliance with Laws and Regulations.
5. Maintain project site for dust, sedimentation, debris, waste, and general site cleanliness.
6. Coordinate location and use of temporary construction facilities including but not limited to sanitary, water, power, telephone, and parking.
7. Coordinate Owner interface for utility tie-ins/shut downs.

8. Monitor shop drawing submittal and coordination of submittal information between Prime Contractors.

SC-13.07(A) In the First sentence of Section 13.07(A) remove "Substantial Completion" and insert "Final Acceptance of the entire project and final payment by the Owner."

SC-13.07(C) Remove 13.07(C) and replace with the following:

All materials and equipment shall be warranted by the respective material supplier or equipment manufacturer until the end of the Contractor's "correction period" (or longer if specified elsewhere in the contract) regardless of date of initial installation or operation of the material or equipment. The cost of such extended warranties as needed from material suppliers or equipment manufacturers to provide warranty coverage until the end of the "correction period" or other period as specified in the contract shall be the responsibility of the prime contractor and shall be assumed to have been included in his bid.

SC-14.02(A) (3) Delete Section 14.02(A) (3) of the General Conditions in its entirety and insert the following:

Until the job is 50% complete, the Contractor will be paid 92% of the estimated value of labor and material completed in acceptable form. After the work is 50% complete, no further funds shall be retained and the Contractor shall be paid 100% of the estimated value of labor and material completed in acceptable form, provided that the Contractor is making satisfactory progress and there is no specific cause for greater withholding. Upon the Owner's agreement that the project is substantially complete, the Retainage may be reduced to twice the value of the remaining punch list work subject to the recommendation of the Engineer and the approval by the Owner.

Add the following section:

SC-14.02(A) (4)

Payment for stored materials at invoice prices or at the unit price bid for materials, or the lesser value of the two, will be made for accepted nonperishable equipment and materials which are to be incorporated into the work, when accepted, delivered, properly stored, and protected upon the site and verified to the Engineer by a copy of the invoice. For materials and equipment meeting the foregoing conditions, the Owner will pay, when properly included in an approved estimate, 92% of the invoice value of the same. Subsequent to the inclusion of a payment for delivered materials in a progress payment, Contractor shall submit no later than the next payment submission, a partial waiver of lien from each and every supplier for whom delivered materials were paid. If no such waiver is submitted prior to or along with the next payment, the amount of delivered materials paid commensurate with that particular item will be deducted from future payments. No payment for delivered materials shall be made for any items that are scheduled to be incorporated in the work within 30 days of submission of the pay estimate. Delivered materials will not be paid in any given month for a total amount less than \$5,000.00. Payment for delivered materials for such items as pipe backfill

and roadway subbase will not be routinely considered.

SC-16.01 Delete Article 16 in its entirety and replace with the following:

ARTICLE 16 - DISPUTE RESOLUTION AGREEMENT - MEDIATION/ARBITRATION

OWNER and CONTRACTOR hereby agree that Article 16 of the General Conditions to the Agreement between OWNER and CONTRACTOR is amended to include the following agreement of the parties:

- 16.01 All claims, disputes, and other matters in question between OWNER and CONTRACTOR arising out of or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.09) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Article 16. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.
- 16.02 No demand for arbitration of any claim, dispute, or other matter that is required to be referred to Engineer initially for decision in accordance with paragraph 9.09 will be made until the earlier of (a) the date on which ENGINEER has rendered a written decision or (b) the thirty-first day after the parties have presented their evidence to ENGINEER if a written decision has not been rendered by ENGINEER before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty days after the date on which ENGINEER has rendered a written decision in respect thereof in accordance with paragraph 9.08 and the failure to demand arbitration within said thirty days' period will result in Engineer's decision being final and binding upon OWNER and CONTRACTOR. If ENGINEER renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of ENGINEER rendered in accordance with paragraph 9.08 will be made later than ten days after the part making such demand has delivered written notice of intention to appeal as provided in paragraph 10.05.
- 16.03 Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration Association, and a copy will be sent to ENGINEER for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 16.02 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- 16.04 Except as provided in paragraph 16.05 below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including ENGINEER, ENGINEER's Consultant, and the officers, directors, agents, employees, or consultants of any of them) who is not a party to this contract unless:

(A) the inclusion of such other person or entity is necessary if complete relief is to be

afforded among those who are already parties to the arbitration, and

- (B) such other person or entity is substantially involved in a question or law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and
- (C) the written consent of the other person or entity sought to be included and of OWNER and CONTRACTOR has been obtained for such inclusion, which consent shall make specific references to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

- 16.05 Notwithstanding paragraph 16.04 if a claim, dispute or other matter in question between OWNER and CONTRACTOR involves the Work of a Subcontractor, either OWNER or CONTRACTOR may join such Subcontractor as a party to the arbitration between OWNER and CONTRACTOR herein under. CONTRACTOR shall include in all subcontracts required by paragraph 6.06(G) a specific provision whereby the Subcontractor consents to being joined in an arbitration between OWNER and CONTRACTOR involving the Work and such Subcontractor. Nothing in this paragraph 16.05 nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of Subcontractor and against OWNER, ENGINEER, or ENGINEER's Consultants that does not otherwise exist.
- 16.06 The award rendered by the arbitration will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.
- 16.07 OWNER and CONTRACTOR agree that they shall first submit any and all unsettled claim, counterclaims, disputes and other matters in questions between them arising out of or relating to the Contract Documents or the breach thereof ("disputes"), to mediation by the American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs 16.01 through 16.06, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The respective thirty and ten day time limits within which to file a demand for arbitration as provided in paragraphs 16.02 and 16.03 above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

SECTION 5
SPECIFIC PROJECT REQUIREMENTS

SPECIFIC PROJECT REQUIREMENTS

1 - CONTACT DURING BIDDING

- 1.1 All questions during bidding should be addressed to John Zack, at Verdantas, LLC, 1625 Lowell Ave., Erie, PA 16506 by email at V241490@verdantas.com.

2 - CORRECTION PERIOD

- 2.1 The Correction Period in Section 13.07 of the General Conditions shall be changed from a one (1) year to a two (2) year period.

3 - INSURANCE

- 3.1 See the following Bid Set Sections for Insurance Requirements:
- A. Section 1, Instructions to Bidders, Part 10 Insurance
 - B. Section 3, General Conditions, Article 5 Bonds and Insurance (EJCDC) or Article 11 Insurance and Bonds (AIA), whichever is used in the Bid Set
 - C. Section 4, Supplemental Conditions

4 - WORKING HOURS

- 4.1 No work shall be performed between the hours of 7:30 p.m. and 7:30 a.m. nor on Saturday, Sunday, or legal Holidays, without written permission of the Owner.

5 - STEEL PRODUCT PROCUREMENT ACT

- 5.1 Contractor is hereby notified that this Contract is subject to the provisions, duties, obligations, remedies and penalties of the Steel Product Procurement Act, 73 P.S. §§1881-1887, as amended, which is incorporated herein by reference as if fully set forth herein. Contractor must refer to the Department of General Services' web site at www.dgs.pa.gov for information regarding the Steel Products Procurement Act and the current list of exempt machinery and equipment steel products.

In the performance of the Contract the Contractor, subcontractors, material men or suppliers shall use only: 1) steel products, rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed by a combination of two or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process; and 2) cast iron products made in the United States.

The Contractor shall certify that all steel and cast iron products to be used or supplied in the performance of the Contract comply with this Act. No payment will be made to the Contractor for steel and cast iron products until such certification has been received.

The Contractor shall include the provisions of the Steel Products Procurement Act in every subcontract and supply contract, so that the provisions of the Act shall be binding upon each subcontractor and supplier.

END OF SECTION

ST-3 75% U.S. MANUFACTURE CERTIFICATION

The Steel Products Procurement Act (73 P.S. § 1881, et seq.) allows the use of steel products with **both** foreign and domestic steel **if at least 75 percent of the cost** of the materials (including steel, rubber, wood, plastic, etc.) in the product are manufactured or produced, as the case may be, in the United States.

This form must be executed by a Fabricator of any item containing BOTH U.S. AND FOREIGN STEEL. The Fabricator shall hereby be defined as the firm that assembles the component parts of the product to be purchased. The Department of General Services will accept the certification of firms that are **earlier** in the chain of purchase (i.e., manufacturers of components, steel suppliers) in lieu of the Fabricator.

This form must be submitted to the CIS within 30 days from the date the Professional approves a GSC-23 listing a "steel product". No steel product may be delivered on-site unless DGS has received an ST form.

A. TO BE COMPLETED BY THE PRIME CONTRACTOR (PURCHASER):

1. Name of Contractor: _____
2. Address of Contractor: _____
3. Phone Number: _____ 4. Date submitted to Fabricator: ____/____/____
5. Contract No. DGS _____ 6. Contract Title: _____
7. Steel Product Certified: _____ 8. GSC-23# _____

Model: _____

B. TO BE COMPLETED BY THE FABRICATOR/MANUFACTURER:

9. Name of Firm: _____
10. Address of Firm: _____
11. Firm's Phone number: (____) _____ 12. Date Received: ____/____/____ 13.
- Fed. Employer ID. No.: _____
14. Percentage of the cost of the articles, materials and supplies which have been mined,
produced or manufactured in the U. S. for the product listed above on Line 7: _____

CERTIFICATION: I, the undersigned Officer of the Fabricator/Manufacturer, do certify that our firm assembled/manufactured the components to the steel product listed in Section 7, that the steel in said product is both foreign and domestically manufactured, and that all the facts contained in this document are true. I agree to provide documentation supporting these facts if requested by the Commonwealth. I further understand that this document is subject to the provisions of the Unsworn Falsification to Authorities Act (18 P.S. § 4904) and the Steel Products Procurement Act (73 P.S. § 1881, et seq.) which provide penalties including, but not limited to, debarment from supplying any products for Commonwealth of Pennsylvania public works projects for a period of five (5) years for violations therein. The Commonwealth reserves the right to pursue any action deemed necessary to protect the Commonwealth's interest and ensure compliance with the laws of the Commonwealth.

Witness:

Name:
Secretary or Treasurer

Name: (Seal)
President or Vice President

(Rev. 6/1/99)

SECTION 6
PREVAILING WAGE RATES

DAVIS-BACON FEDERAL WAGE DECISION

The Contractor agrees that each individual employed by the Contractor or any Subcontractor and engaged in work on the project under this contract shall be paid the prevailing wage established by the U.S. Department of Labor under the Davis-Bacon and related Acts. This shall occur regardless of any contractual relationship which may be said to exist between the Contractor and any individual or any Subcontractor and any individual.

The Prevailing Wage Determination Schedule for this project is attached for review. These wages are subject to change pending modifications by the Department of Labor. Wage Determination Schedules can be viewed via the internet at <http://www.wdol.gov/dba.aspx>.



(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

NAME OF CONTRACTOR OR SUBCONTRACTOR						ADDRESS								OMB No.: 1235-0008 Expires: 02/28/2018						
PAYROLL NO.				FOR WEEK ENDING									PROJECT AND LOCATION				PROJECT OR CONTRACT NO.			
(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5)	(6)	(7)	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK		
			HOURS WORKED EACH DAY						TOTAL HOURS	RATE OF PAY	GROSS AMOUNT EARNED	FICA	WITH-HOLDING TAX	OTHER	TOTAL DEDUCTIONS					
	O										/									
	S										/									
	O										/									
	S										/									
	O										/									
	S										/									
	O										/									
	S										/									
	O										/									
	S										/									
	O										/									
	S										/									
	O										/									
	S										/									
	O										/									
	S										/									

While completion of Form WH-347 is optional, it is mandatory for covered contractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (29 U.S.C. § 3145) requires contractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(iii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Washington, D.C. 20210

(over)

Date _____

I, _____ (Name of Signatory Party) _____ (Title)
do hereby state:

(1) That I pay or supervise the payment of the persons employed by _____ on the _____
(Contractor or Subcontractor)
_____ (Building or Work); that during the payroll period commencing on the _____ day of _____, _____, and ending the _____ day of _____, _____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____

_____ (Contractor or Subcontractor) _____ from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967, 76 Stat. 357; 40 U.S.C. § 3145), and described below:

DB.3

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

— in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE
THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.	

How to Correctly Fill Out a WH-347 Payroll Form

The completion of the WH-347 Payroll Form is optional; contractors may utilize their own payroll system as long as it conforms to the WH-347 Payroll Form and contains all the necessary information. If you utilize WH-347 Payroll Form as a pdf, saving it electronically aids in making any needed corrections.

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

PAYROLL
(For Contractor's Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347instr.htm)
Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐ Sample Construction Company

ADDRESS 385 West Drive, Madison WI 53703

OMB No.: 1215-0149
Expires: 12/31/2011

PAYROLL NO. 8

PROJECT AND LOCATION Robin Street Apartments, Delafield WI 53018

PROJECT OR CONTRACT NO. 3000

FOR WEEK ENDING 04/24/2010

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) EMPLOYMENT STATUS (1 = Full Time, 2 = Part Time, 3 = Seasonal, 4 = Temporary, 5 = Other)	(3) WORK CLASSIFICATION (e.g., Power Equipment Operator, Heavy Construction)	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS				(9) NET WAGES PAID FOR WEEK	
			Sun	Mon	Tue	Wed	Thurs	Frid	Sat				WITH- HOLDING TAX	State with- holding tax	Medicare	OTHER DEDUCTIONS		TOTAL DEDUCTIONS
Alex Driver - ####	2	Power Equipment Operator, Heavy Construction								2.00	\$62.83	\$1,422.84	\$161.00	\$185.15	\$50.31	\$85.00	\$2,012.46	\$1,374.03
										27.50	\$62.83	\$2,012.46	\$161.00	\$185.15	\$50.31	\$85.00	\$2,012.46	\$1,374.03

Check one of the boxes and list name of contractor or subcontractor

The last day of the payroll period.

Fill out completely with contractor or subcontractor address

The prime contractor should include the project number as listed in the loan

The name and location of project.

Indicate the days and dates of the pay period. (should match week ending directly above)

Payrolls must be numbered sequentially and should be based on the weeks worked under a contract.

Type the word "Final" when the last payroll is submitted for the project.

If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter the gross amount earned on this contract in the top half of column 7. Enter the gross amount earned during the week for all projects in the bottom half.

Alex Driver worked 29.5 hours on this contract and 12.5 hours on another contract.
The gross wages earned on this project, \$1,422.84, is entered in the top half of column 7.
The gross wages earned on all projects, \$2,012.46, is entered in the

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE							DEDUCTIONS							(9) NET WAGES PAID FOR WEEK		
			Sun 18	Mon 19	Tue 20	Wed 21	Thurs 22	Fri 23	Sat 24	TOTAL HOURS	RATE OF PAY	GROSS AMOUNT EARNED	FICA	WITH- HOLDING TAX	State with- holding tax	Medicare		OTHER	TOTAL DEDUCTIONS
Alex Driver - #####	2	Power Equipment Bull Dozer Group 2							2.00	\$62.83	\$1,422.84	\$85.15	\$185.15	\$156.97	\$50.31	\$85.00	\$638.43	\$1,374.03	
Jason Worker - #####	2	General Laborer							4.00	\$40.70	\$1,700.78	\$35.06	\$156.47	\$132.66	\$42.52		\$467.71	\$1,233.07	
Sharon Wood - #####	3	Carpenter							1.50	\$60.19	\$1,887.49	\$151.00	\$154.77	\$128.35	\$47.19		\$481.31	\$1,406.18	
Reggie Tree - #####	1	Apprentice Carpenter 1st 6 mo. at 40%							40.00	\$32.72	\$1,064.72	\$85.18	\$105.41	\$90.50	\$26.62		\$307.71	\$757.01	
Roy Wrench - #####	5	Plumber									\$1,004.80								
Roy Wrench - #####	5	Steamfitter							20.00	\$69.13	\$1,038.40	\$163.46	\$147.11	\$118.51	\$51.08		\$480.16	\$1,563.04	
Bart Turner - #####	1	Power Equipment Rotary Drill Group 4							24.00	\$60.80	\$719.28	\$115.41	\$142.48	\$122.33	\$35.98		\$415.53	\$1,023.27	

If an employee performs multiple work

If an employee performs multiple work classifications under the contract, use two or more lines to distinguish the different job classifications, hours worked, and hourly wage earned for each.

Combine the two classifications when recording the gross amount earned for this pay period, deductions, and net wages.

Provide explanation of "other" deductions on signatory page.

PAYROLL
Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347

Division
80

current pay scale & provide a copy of the apprenticeship agreement.

5-01419
Expires: 12-31-2019

ADDRESS 385 West Drive, Madison WI 53703

PROJECTOR CONTRACTING

04/24/2010

PROJECT AND LOCATION
Robin Street Apartments, Delafield WI 53018

3000

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER OF WORKER)	(2) NO OF EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS				(9) NET WAGES PAID FOR WEEK			
			HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX	State with- holding tax	Medicare		OTHER	TOTAL DEDUCTIONS	
			Sun	Mon	Tue	Wed	Thur	Frid	Sat											
Alex Driver - #####	2	Power Equipment Bull Dozer Group 2	18	19	20	21	22	23	24		2.00	\$62.83	\$1,422.84	\$161.00	\$185.15	\$156.97	\$50.31	\$85.00	\$638.43	\$1,374.03
Jason Worker - #####	4	General Laborer				8.00	8.00	5.50	6.00		27.50	\$83.32	\$2,012.46	\$136.06	\$156.47	\$132.66	\$42.52		\$467.71	\$1,233.07
Sharon Wood- #####	3	Carpenter				8.00	8.00	8.00	8.00		40.00	\$49.20	\$1,700.78	\$151.00	\$154.77	\$128.35	\$47.19		\$481.31	\$1,406.18
Reggie Tree - #####	1	Apprentice Carpenter 1st 6 mo. at 40%				8.00	8.00	8.00	8.00		40.00	\$60.19	\$1,887.49	\$85.18	\$105.41	\$90.50	\$26.62		\$307.71	\$757.01
Roy Wrench - #####	5	Plumber										\$32.72	\$1,064.72							
Roy Wrench - #####	5	Steamfitter				8.00			4.00	8.00	20.00	\$69.13	\$1,038.40	\$163.46	\$147.11	\$118.51	\$51.08		\$480.16	\$1,563.04
Bart Turner - #####	1	Power Equipment Rotary Drill Group 4				8.00	8.00		4.00		20.00	\$60.80	\$719.28	\$115.14	\$142.43	\$122.33	\$35.98		\$415.93	\$1,023.27
						8.00	8.00		8.00		24.00	\$29.97	\$1,439.20							

Fringe benefits are not paid as cash to

Bart Turner: explanation is included under "(c) exceptions" on signatory

page. [REDACTED] **Public Burden Statement**

We estimate that it will take approximately 15 minutes, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, DC 20540-6012, and to the Office of Management and Budget, Paperwork Project Director (0307-0182), Washington, DC 20503.

over)

Date 04/28/2010
I, Tiffany Payer Payroll Supervisor
(Name of Signatory Party) (Title)
do hereby state:

(1) That I pay or supervise the payment of the persons employed by
Sample Construction Company
(Contractor or Subcontractor) on the
Robin Street Apartments, Delafield WA; that during the payroll period commencing on the
18 day of 4, 2010 and ending the 24 day of 4, 2010
all persons employed on said project have been paid the full weekly wages earned, that no rebates have
been or will be made either directly or indirectly to or on behalf of said
Sample Construction Company
(Contractor or Subcontractor) from the full
weekly wages earned by any person and that no deductions have been made either directly or indirectly
from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part
3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 940,
63 Stat. 108, 72 Stat. 907, 76 Stat. 357; 40 U.S.C. § 3145), and described below:

Alex Driver - #### - other deductions - \$85 for child support

Explanation of "other"

(2) That any payrolls otherwise under this contract required to be submitted for the above period are
correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the
applicable wage rates contained in any wage determination incorporated into the contract; that the
classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide
apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of
Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a
State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS
☐ - In addition to the basic hourly wage rates paid to each laborer or mechanic listed in
the above referenced payroll, payments of fringe benefits as listed in the contract
have been or will be made to appropriate programs for the benefit of such
employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☒ - Each laborer or mechanic listed in the above referenced payroll has been paid,
as indicated on the payroll, an amount not less than the sum of the applicable
basic hourly wage rate plus the amount of the required fringe benefits as listed
in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
Power Equipment Rotary Drill Group 4	paid directly to plan: health & dental at \$12.50 per hour and Pension at \$6.25 per hour

Explanation of
exception to
fringe benefits

REMARKS:

NAME AND TITLE Robert Sample, Owner	SIGNATURE
THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.	

CONTRACTOR FRINGE BENEFIT STATEMENT

Contract # /Project Name:	Contract Location:	Today's Date:
Contractor / Subcontractor Name:		Business Address:

In order that the proper Fringe Benefit rates can be verified when checking payrolls on the above contract, the hourly rates for fringe benefits, subsistence and/or travel allowance payment made for employees by the employer on the various classes of work are tabulated below. **Please Include Apprentice Rates.**

Classification:		Effective Date:	Subsistence or Travel Pay: \$ _____
EMPLOYER PAID FRINGE BENEFITS	Health & Welfare \$ _____ hr	Paid To: Name of Plan/Fund/Program: Address:	_____ _____
	Pension \$ _____ hr	Paid To: Name of Plan/Fund/Program: Address:	_____ _____
	Vacation/Holiday \$ _____ hr	Paid To: Name of Plan/Fund/Program: Address:	_____ _____
	Training \$ _____ hr	Paid To: Name of Plan/Fund/Program: Address:	_____ _____
	Other \$ _____ hr	Paid To: Name of Plan/Fund/Program: Address:	_____ _____

Classification:		Effective Date:	Subsistence or Travel Pay: \$ _____
EMPLOYER PAID FRINGE BENEFITS	Health & Welfare \$ _____ hr	Paid To: Name of Plan/Fund/Program: Address:	_____ _____
	Pension \$ _____ hr	Paid To: Name of Plan/Fund/Program: Address:	_____ _____
	Vacation/Holiday \$ _____ hr	Paid To: Name of Plan/Fund/Program: Address:	_____ _____
	Training \$ _____ hr	Paid To: Name of Plan/Fund/Program: Address:	_____ _____
	Other \$ _____ hr	Paid To: Name of Plan/Fund/Program: Address:	_____ _____

Supplemental statements must be submitted during the progress of the work should there be an increase or change in rates. Use additional sheets as necessary. (Attach a copy of your most recent premium transmittal (including copy of check submitted) into each of the above plans/funds/programs or a letter from the above plans/funds/programs reflecting current payment status).

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds or programs as listed above.

Name and Title	Signature and Date (Wet Signature Required)
_____	_____

PREVAILING WAGE NOTIFICATION TO EMPLOYEE

Project Name:		Job Number:	
Contractor:			
Project Location:			
Jobsite posting of prevailing wage rates located:			
Prevailing Wage Coordinator		Employee	
Name:		Name:	
Street:		Street:	
City:		City:	
State / Zip:		State / Zip:	
Phone:		Phone:	
<p>You will be performing work on this project that falls under these classifications. You will be paid the appropriate rate for the type of work you are performing.</p>			
Classification	Prevailing Wage Rate Total Package	Minus Your Fringe Benefits	Your Hourly Base Rate
Hourly fringe benefits paid on your behalf by this company.			
Fringe	Amount	Fringe	Amount
Health Insurance		Vacation	
Life Insurance		Holiday	
Pension		Sick Pay	
Bonus		Training	
Other		TOTAL HOURLY FRINGES	
Contractor's Signature:			Date:
Employee's Signature:			Date:

whpw1512

Superseded General Decision Number: PA20240088

State: Pennsylvania

Construction Type: Building

County: Erie County in Pennsylvania.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none">. Executive Order 14026 generally applies to the contract.. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none">. Executive Order 13658 generally applies to the contract.. The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

2	02/07/2025
3	02/21/2025
4	03/07/2025
5	03/28/2025
6	06/13/2025
7	06/27/2025
8	07/25/2025
9	08/08/2025

BOIL0154-007 01/01/2025

	Rates	Fringes
BOILERMAKER.....	\$ 48.28	33.17

BRPA0009-011 12/01/2022

	Rates	Fringes
TILE FINISHER.....	\$ 28.76	17.16
TILE SETTER.....	\$ 35.64	21.63

BRPA0009-056 05/01/2022

	Rates	Fringes
BRICKLAYER (Including Pointing, Caulking, and Cleaning).....	\$ 31.24	22.92
MASON - STONE.....	\$ 31.24	22.92

CARP0081-010 05/01/2025

	Rates	Fringes
CARPENTER (Includes Drywall Hanging, Metal Stud Installation, Floor Laying-Carpet, Vinyl, and Form Work; Excludes Acoustical Ceiling Installation).....	\$ 35.83	19.53

CARP0142-012 06/01/2023

	Rates	Fringes
CARPENTER (Acoustical Ceiling Installation Only).....	\$ 38.92	20.06

CARP0274-003 01/01/2025

	Rates	Fringes
PILEDRIVERMAN.....	\$ 41.88	22.67

CARP0443-004 06/01/2024

	Rates	Fringes
MILLWRIGHT.....	\$ 43.00	23.44

ELEC0056-006 06/01/2025

	Rates	Fringes
--	-------	---------

ELECTRICIAN (Excludes Low Voltage Wiring and Alarm Installation).....	\$ 43.25	26.56
---	----------	-------

ELEC0712-011 01/01/2024

	Rates	Fringes
ELECTRICIAN (Alarm Installation and Low Voltage Wiring Only).....	\$ 47.30	28.12

* ENGI0066-043 05/01/2025

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Backhoe/Excavator/Trackhoe, Bobcat/Skid Steer/Skid Loader, Crane*, Drill Rig Caissons, Highlift, Paver (Asphalt, Aggregate, and Concrete).....	\$ 34.10	22.07
Bulldozer, Compactor, Drill, Gradall, Grader/Blade, Mechanic, Forklift (Lull).....	\$ 34.10	22.07
Hoist, Pump, Forklift (ridden or self-propelled)..	\$ 34.10	22.07
Loader.....	\$ 34.10	22.07
Oiler.....	\$ 29.25	22.07
Roller.....	\$ 33.43	22.07

*Add to Crane rate:

Booms 101-150 jibs- Add \$0.50
Booms 151-200 jibs- Add \$1.00
Booms over 200 jibs-Add \$1.50

IRON0003-023 06/01/2023

	Rates	Fringes
IRONWORKER (Ornamental, Reinforcing, Rigger and Structural; Metal Buildings: Metal Siding/Wall Panels Installation).....	\$ 33.57	32.23

LAB00125-005 06/01/2022

	Rates	Fringes
LABORER		
Mason Tender - Cement/Concrete.....	\$ 30.24	12.05

LAB00323-005 01/01/2014

	Rates	Fringes
LABORER		
Mason Tender-Brick.....	\$ 21.92	12.81

PAIN0549-002 05/01/2024

	Rates	Fringes
PAINTER		
Brush and Roller.....	\$ 26.37	24.89
Drywall Finishing/Taping....	\$ 26.62	24.89
Spray.....	\$ 27.12	24.89

PLAS0526-013 05/01/2022

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 31.89	17.39

PLUM0027-006 06/01/2023

	Rates	Fringes
PLUMBER.....	\$ 46.98	25.47

PLUM0449-006 06/01/2024

	Rates	Fringes
PIPEFITTER (Includes HVAC Pipe Installation).....	\$ 48.15	29.17

ROOF0210-007 05/01/2023

	Rates	Fringes
ROOFER (Excludes Metal Roof Installation and Waterproofing).....	\$ 33.50	16.70

* SFPA0669-004 04/01/2025

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 49.75	28.96

SHEE0012-013 07/01/2022

	Rates	Fringes
SHEET METAL WORKER (Includes HVAC Duct, Metal Roof, and Metal Flashing Installation).....	\$ 39.50	30.79

* UAVG-PA-0024 01/01/2025

	Rates	Fringes
GLAZIER.....	\$ 26.85	18.10

* UAVG-PA-0025 01/01/2025

	Rates	Fringes
PLASTERER.....	\$ 28.26	18.62

* SUPA2011-046 08/20/2014

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 30.41	20.04
LABORER: Common or General.....	\$ 17.40 **	6.93
ROOFER: Waterproofing Only.....	\$ 26.77	12.57
TRUCK DRIVER: Dump Truck.....	\$ 23.36	7.60

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the

state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

=====

END OF GENERAL DECISION"