



Fort Collins-Loveland Water District  
Engineering Department  
5150 Snead Drive  
Fort Collins, CO 80525  
970.226.3104

## REQUEST FOR PROPOSAL 250401 FCLWD SNEAD FACILITY IMPROVEMENTS – BUILDING GC SERVICES

Notice of this Request for Proposals has been posted on the District's webpage:  
<https://fclwd.com/support/request-for-proposal/>

The Fort Collins-Loveland Water District (District), a quasi-municipal corporation and political subdivision of the State of Colorado is soliciting Requests for Proposals (RFP) from qualified General Contractors (GC) to provide design/preconstruction support and construction services for an addition to our current office building, remodeling of the existing office, and a standalone conditioned garage for equipment/materials.

**Proposal submission via email is preferred.** Proposals shall be submitted in a single PDF file under 20MB and e-mailed to: [jmartin@fclwd.com](mailto:jmartin@fclwd.com). **Proposals must be received no later than the date and time listed in the table below** and referenced as *RFP: 250401 FCLWD Snead Facility Improvements - Building GC Services* in the subject line. Late submittals or submittals delivered to the wrong location will not be accepted. The District expects to award a contract to the proposer who submits the proposal which, in the District's estimation, represents the best value to the District.

All questions should be submitted at any time, in writing via email, to Jason Martin, at [jmartin@fclwd.com](mailto:jmartin@fclwd.com). **Final questions shall be submitted no later than the date and time listed in the table below.** Please format your email to include *RFP: 250401 FCLWD Snead Facility Improvements - Building GC Services* in the subject line. Responses to all questions submitted before the deadline will be addressed in an addendum and emailed to all interested contractors. Respondents are required to email Jason Martin, at [jmartin@fclwd.com](mailto:jmartin@fclwd.com) to be placed on the plan holders list to receive addendums and schedule updates.

The procurement process will be a qualification-based, competitive process. The following procurement schedule is tentative, and the District reserves the right to adjust this schedule.

PROPOSAL SUBMISSION SCHEDULE	DATES/TIMES
Request for Proposals Announcement	May 22 <sup>nd</sup>
Pre-Proposal Meeting	N/A
Questions/Inquires Closed	June 2 <sup>nd</sup> at 1:00PM
Last Addenda Issued	June 4 <sup>th</sup> at 1:00PM
Proposal Deadline	June 12 <sup>th</sup> at 1:00PM
Short List Determined	June 16 <sup>th</sup>
Interview(s)	June 18 <sup>th</sup> – June 25 <sup>th</sup>
Contract Negotiations	June 30 <sup>th</sup> – July 3 <sup>rd</sup>

The District reserves the right to act in its best interest and may terminate, modify, or suspend the process, reject any or all submittals, modify the terms and conditions of this selection process and/or waive informalities of any submission. The District will not be obligated to any vendor as a result of this RFP and is not obligated for any cost incurred whatsoever by vendors in the preparation of the proposal.

The selected Vendor shall be expected to sign a Master Service Agreement with the District prior to commencing Services (see sample in Section IX). Following selection of a proposal, the District, at its sole discretion, will incorporate applicable proposal terms into the Master Services Agreement.

Sincerely,  
Jason Martin  
Construction Project Manager

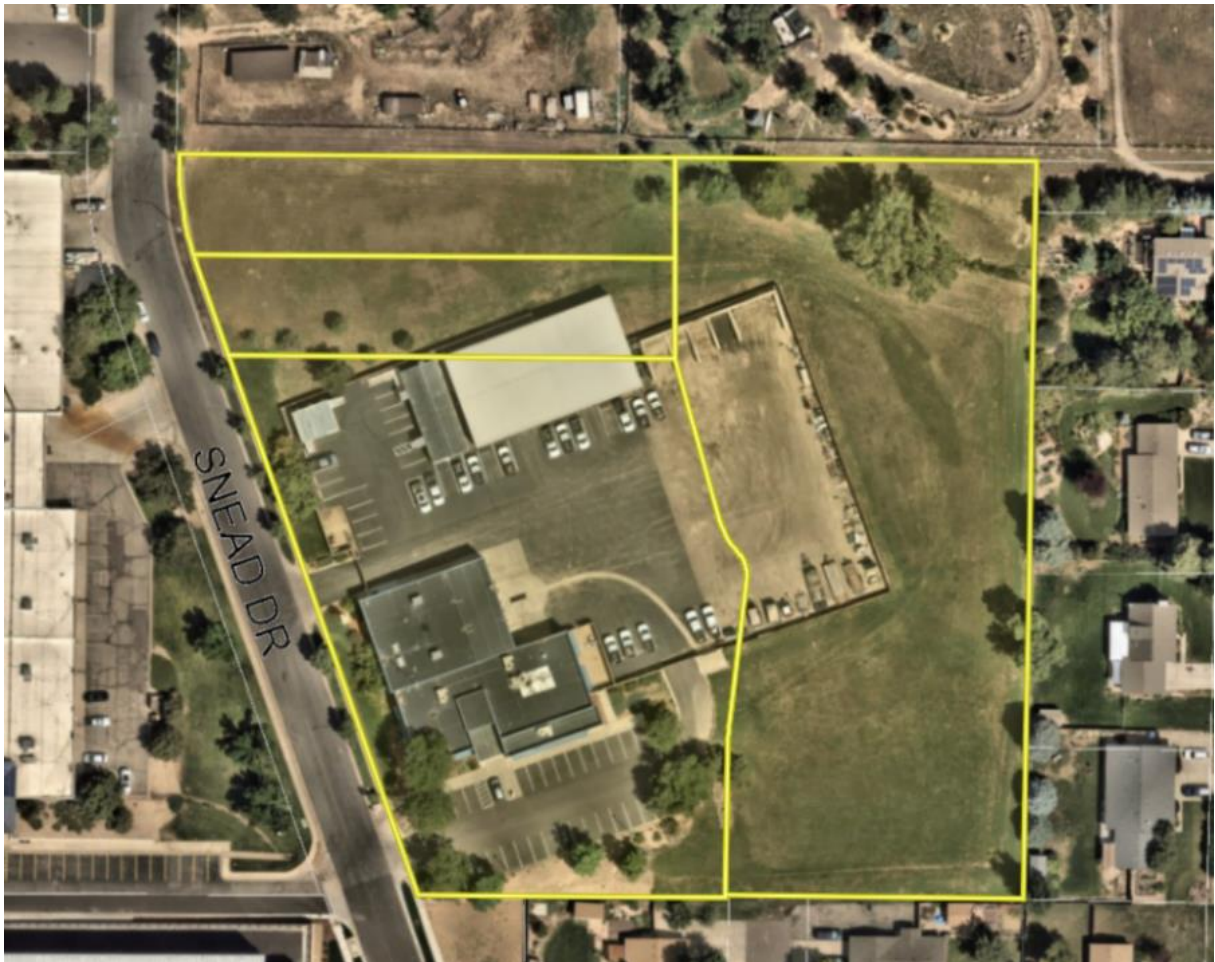
## **I. INTRODUCTION AND BACKGROUND**

### **A. Purpose**

The Fort Collins-Loveland Water District (District) is seeking proposals from General Contractors to provide preconstruction support and construction services for the Snead Facility Improvements Project (Project). Contractors will be required to work collaboratively with the District, its selected Design/Engineering/ Consultants, and its selected Site/Civil General Contractor.

### **B. Location**

The Project is located at 5150 Snead Drive, Fort Collins, Colorado.



*Figure 1: Parcels Shown at Snead Site*

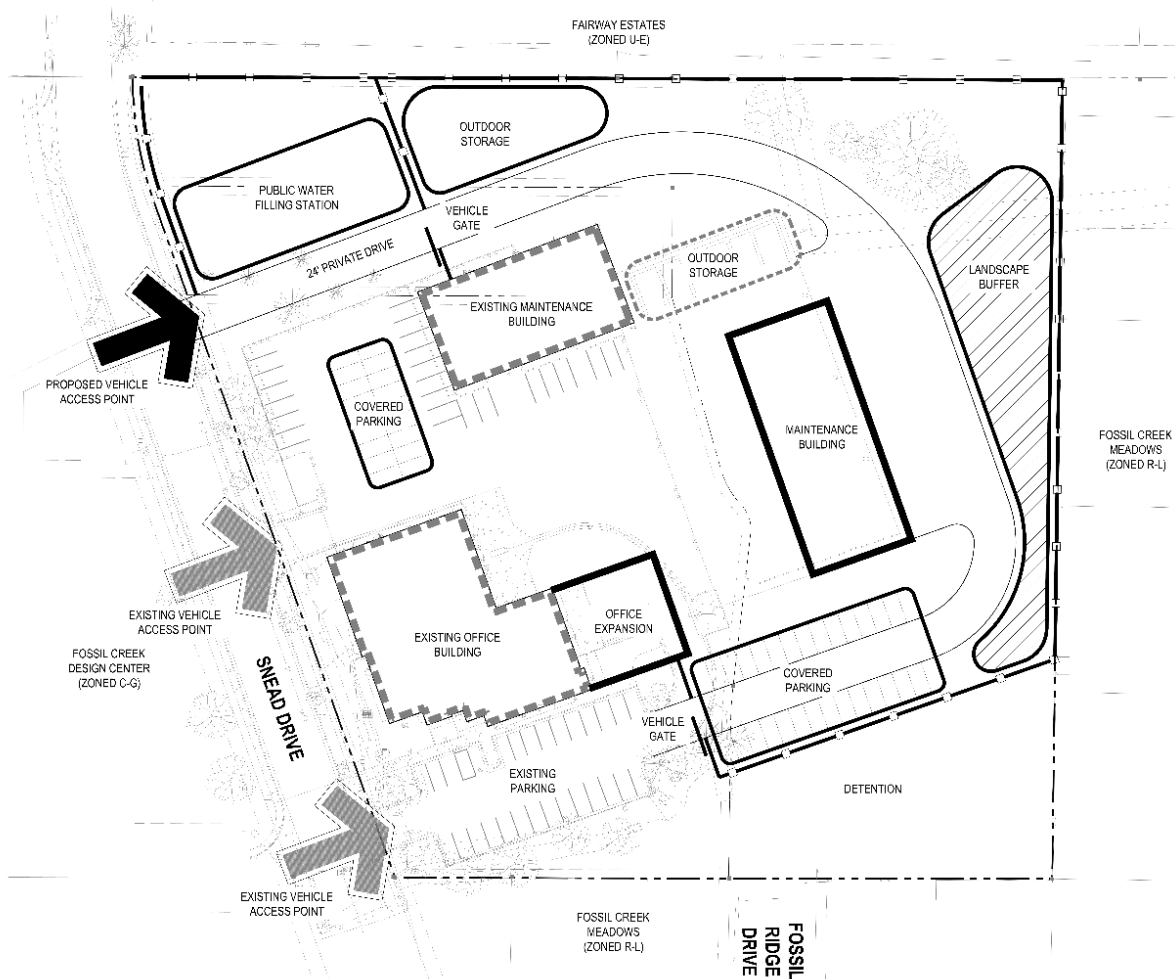
### **C. Background & Project Goals**

#### **Background**

The District, a quasi-municipal entity, has been delivering water services to this region since 1961. The District currently serves over 67,000 customers. Their mission is to provide Northern Colorado communities with high-quality, secure, reliable, cost-effective, and sustainable water. Since moving to

this location in 2000, the District expanded its office building once in 2008 but has since outgrown the space.

Currently the District spans four parcels: one zoned for General Commercial (GC) use, where the office building is located, and three zoned for Low Density Residential (RL) for a total of 4.86 Acres. In 2021, the District received approval from the City of Fort Collins for an Overall Development Plan (ODP 210001) to permit additional uses on the three RL parcels which has allowed this project to proceed through development review with the City of Fort Collins.



*Figure 2: City Approved ODP Concept (Site Scope is Conceptual)*

Following the approval of the Overall Development Plan (ODP) by the City of Fort Collins, the District conducted an evaluation of its services and programming through 2044. This evaluation provided the District with the necessary insights to understand its future space requirements. Utilizing the findings from the evaluation, staff assessed whether the District could expand at its current location or would need to relocate to a larger site. The table below outlines the defined space requirements. The sizing of the structures may be refined as the design progresses.

Master Plan Evaluation Summary							
					Proposed Phasing Line		
Cumulative Office Requirements	2024	2025	2026-2028	2029-2031	2032-2034	2035-2039	2040-2044
Office Building SF <sup>5</sup>	7407	7906	9523	10095	10990	11156	11395
Building Support Space SF <sup>1</sup>	6016	6016	6016	6016	6016	6016	6016
Total Building SF	13423	13922	15539	16111	17006	17172	17411
Number of Employees	42	46	61	67	76	78	79
Cumulative Vehicle Requirements	2024	2025	2026-2028	2029-2031	2031-2034	2035-2039	2040-2044
Staff Vehicles							
Square Footage	12192	13248	17208	18792	21168	21696	21960
Quantity	42	46	61	67	76	78	79
Fleet Vehicles							
Square Footage	6720	8120	10360	11480	12880	13160	13160
Quantity	24	29	37	41	46	47	47
Cumulative Equipment Requirements	2024	2025	2026-2028	2029-2031	2031-2034	2035-2039	2040-2044
Future Equipment Wash Bay <sup>3</sup>	1800	1800	1800	1800	1800	1800	1800
Indoor Storage <sup>2</sup>							
Square Footage	4800	4800	7200	7200	9600	9600	9600
# 60' x 20' Bays	4	4	6	6	8	8	8
Total Indoor Equipment SF + Wash Bay	6600	6600	9000	9000	11400	11400	11400
Indoor Bays + Wash Bay	5	5	7	7	9	9	9
Outdoor Storage	2010	2010	2010	2010	2010	2010	2010
Equipment	21	21	25	25	30	30	30
<b>Notes:</b>							
Denotes Years w/No-Change							
Current Site	211706	SF					
Existing Office	6371	SF					
Existing Shop/Garage <sup>4</sup>	3488	SF					
Existing Lower Mezzanine & Support	1433	SF					
Existing Upper Mezzanine Support	790	SF					
Existing Annex	6000	SF					
Existing Material Bins	2342	SF					
Existing Staff/Visitor Parking As Defined	27	EA					
<sup>1</sup> Current Calculations Assume Full Buildout of Building Support Spaces of 6016SF, Not Inc. Upper/Lower Mezzanine Support Areas							
<sup>2</sup> Indoor Storage Accounts For 60' x 20' Storage Bays							
<sup>3</sup> Future Equipment Wash Bay Size 60' x 30', Assumes catwalks to assist with washing.							
<sup>4</sup> Remaining SF is Equivalent to 3 - 60' x 19' Bays							
<sup>5</sup> Existing Lower & Upper Mezzanine SF Added to Office Building SF							

## Goals

The goal is to facilitate the completion of the Project to fulfill the District's anticipated needs for staffing, parking, equipment, and storage.

- A design that allows future operations to continue at their current location with the flexibility to grow.
- Provide a collaborative/efficient space that allows for a work environment that can grow with the District.
- Review potential options to phase building and site improvements as the District grows.

## **D. Funding**

Early estimates project construction costs for the building and site/civil work is at \$10.5 Million.

## **II. STATEMENT OF WORK**

### **A. Guiding Principles**

In general, the Contractor will be responsible for early contractor engagement to influence the design for more efficient construction. Since the Contractor is being selected for both the preconstruction and construction phases of service and due to the opportunity for the Contractor's team to provide input to the design, it is expected that significant unforeseen changes, delays, and risks will be avoided, and that best value will be realized.

The Contractor's effort will consist of two phases.

#### **Phase 1 - Design / Preconstruction.**

- a) Role: The Contractor and members of the Contractor's team will be actively engaged members of the Project through all design milestones where an innovative approach to solving difficult construction problems and sequencing is essential. The Contractor will be expected to attend design meetings as needed during all phases of the Project. The selected Contractor is expected to bring construction expertise to the team and actively provide constructability review and construction planning including but not limited to scheduling, materials and subcontractor selection, design alternative assessment and selection, material selection, material procurement, material lead times, data collection assistance, contract requirements, and detailed cost estimating and pricing to include competitive quoting at various design milestones.
- b) Pricing of the Project along with a third-party independent cost estimate (ICE), will be completed at various design milestones as determined by the District with input from the Project team. The third-party ICE firm will be contracted separately by the District to assist in determining the reasonableness of the Project cost. During the preconstruction phase, information provided by the Contractor will be reviewed and discussed, and consensus will be reached by the Project team for the execution, schedule, and cost for each major decision. At various design milestones, the Contractor team, Consultant team and third-party ICE will discuss and reconcile cost estimates. Material and subcontractor pricing will be determined by a competitive quote process at certain Project milestones determined by the team.
- c) This phase of work will be paid at hourly billing rates for assistance with design.

#### **Phase 2 – Construction**

- a) Role: The selected Contractor will serve as the General Contractor for building construction of the Project and function as part of the Project Team during construction.
- b) The selected building Contractor will be expected to provide construction services for the building expansion, remodel, and equipment storage facility. The building contractor will be expected to coordinate with the Site / Civil Contractor that the District onboards.

- c) Between the 90% and 100% design phase, a construction contract(s) will be negotiated and executed on a cost-plus fixed percentage markup basis. Material and subcontractor pricing may be determined by a competitive quote process if warranted.

## **B. Deliverables**

The Contractor's team is expected to bring experience and expertise in building construction projects, with a history of delivering projects using early contractor involvement methods. During the contract period, the Contractor's team may be requested to inform decisions on or perform some or all the following services for the Project:

- Safety and security
- Material & constructability analysis & methods, sequencing, schedule, and pre-construction pricing and estimates (30%, 60%, 90%)
- Value engineering
- Evaluating project risks and developing a Risk Register and Risk Management Plan
- Long lead material procurement
- Prepare construction permit applications as required
- Project management, onsite supervision, and coordination, partnering
- Labor, materials, and equipment
- Mechanical, electrical, plumbing, and low-voltage control systems
- Temporary facilities, site access, layout, and development
- Subcontractor management
- Ground water management during construction
- Interaction with involved agencies / key stakeholders / local community
- Construction under high pedestrian/vehicular traffic or sensitive areas
- Building utility relocations/coordination
- Additional services, as needed

## **C. Delivery Approach**

The Project will be managed using an Integrated Project Delivery (IPD) model. Experience with early contractor involvement (ECI) or alternative delivery methods of design and construction is critical and necessary for the Contractor team. The Contractor team will be part of an overall Project team consisting of the District's Project Manager(s) and other District staff, Project Construction Contractor's team, and the selected Consultant's team, subconsultants and subcontractors. This team will work together from the start of design through completion of construction. Each team member will have significant involvement in the design and construction concepts that are developed and utilized. Participation by all team members throughout each phase is expected to allow innovation and enhance Project quality and value.

## **D. Independent Cost Estimate**

The independent estimating process will be used for the Project. An Independent Cost Estimate (ICE) is a tool utilized to assist in determining the reasonableness of the Project cost. The ICE is performed by a third-party ICE Consultant at critical milestones during the Project.



The Project Manager will initiate the ICE with input from the Contractor by providing the ICE Consultant with all pertinent information required to accurately estimate the Project. This information may include, but is not limited to, the following: contract drawings, quantities, quotes, bids, equipment and material specifications, quality requirements, geo-tech reports, construction start and special conditions.

Unless determined by the Project Manager, the Contractor will be required to provide competitive quotes for all subcontract work and materials, except for firms selected as part of the Contractor team responding to this RFP, when the total Project spend with any one subcontractor or supplier will exceed one-hundred twenty thousand dollars (\$120,000). The competitive selection process will be conducted by the Contractor with input from the Project team.

The Project Manager will complete a comprehensive review of cost estimates from both the Contractor and ICE Consultant. A reconciliation meeting with the Project Manager, Contractor, Designers, and ICE Consultant will be conducted to review, in an 'open book' manner, the cost estimates prepared by the Contractors and the ICE Consultant. Any single line-item discrepancies exceeding 5% shall be evaluated and reconciled. The level of due diligence should be commensurate with the materiality of the variance.

Comparison of the cost estimates will be continued until all items are understood and agreed upon by the Project Manager, Consultant, and Construction Contractor. If the District and Construction Contractor cannot reach agreement on the contract price through the ICE process, the District reserves the right to terminate the contract. In this case, the Contractor will not be able to propose or bid on the Project in the future. The individual, staff member, or ICE Consultant performing the ICE will be required to submit a detailed final report of the cost estimate, reconciliation process and outcome. The report will be maintained in the Project file.

### **III. SCHEDULE**

The schedule for construction of the Project is primarily dictated by the development review period with the City of Fort Collins.

The Contract for GC services is expected to be awarded Summer 2025. The District foresees the completion of planning/entitlement, design, and permitting within the first quarter of calendar year 2026. Construction would commence immediately after approval. The following is a list of identified project milestones:

<b>MILESTONES</b>	<b>STATUS</b>
Site Master Plan	Complete
Onboarding Planning, Design, & Engineering	Complete
Onboarding Building Contractor & Site/Civil Contractor	In Progress
Site Conceptual Plan / Building Schematic Design	Q2 - Q3 2025
Site Project Development Plan (PDP) / Building Design Development	Q2 - Q4 2025
Site Final Development Plan (FDP) / Construction Documents	Q4 2025 – Q1 2026
Site & Building Phasing / Construction	Q2 2026
Commissioning / Closeout / City Approvals	Q4 2026
Furniture, Fixtures, & Equipment (FF&E) / Move-In	Q1 2027



#### **IV. PROPOSAL SUBMITTAL REQUIREMENTS**

Respondents shall submit a proposal package tailored specifically to the project. Submissions which shall be **limited to ten (10) single-sided letter size pages and with a minimum of 10-point font for all text**. A maximum of five (2) 11x17 sheets are allowed and will each count as a single page. Cover page, table of contents, tabs (if used), cost backup information, financial information, resumes, and items listed under sections D.1, D.2, F.1, F.4, H.1, H.2, and K will not be counted toward this page limit. The proposal shall follow the format presented below.

Contractors are required to provide detailed written responses to the following items in the order outlined below. It is suggested that Contractors include each of the District's questions with their response immediately after the question. The responses shall be considered technical offers of what Contractors propose to provide and shall be incorporated in the contract award as deemed appropriate by the District. A proposal that does not include all the information required may be deemed non-responsive and subject to rejection.

##### **A. Cover Letter**

Provide a cover letter that explains what experience and why the respondent can provide the best value to the District. Include contact information, including an official e-mail address to receive notifications and updates. The cover letter must include a clear and concise statement of the Contractor's understanding of the required services, a summary of the partnership the Contractor envisions with the District, and an explanation of why the Contractor can provide the best value to the District. Further, the cover letter must include a summary of the Contractor's qualifications and detail the Contractor's experience with alternative delivery models.

##### **B. Firm Summary**

Provide an outline describing the respondents firm, including:

1. Company Name, Local/Regional Office, Website
2. Time in business
3. Size of business: Employees, Annual revenue, Revenue by type of service, Number of projects, etc...
4. Type of services available, with specializations indicated
5. Project Capacity/Availability, Current backlog, 2026/2027 backlog
6. Licenses held, registrations, and credentials
7. Have you, or your firm, ever defaulted on a contract? If so, where, and why?
8. Are there any lawsuits pending against you, your firm, or employees of your firm in their employment capacity, currently? If yes, provide a summary of the matter and status of the lawsuit.

If the respondent is a Joint Venture, the lead firm for the venture shall be clearly identified and expected participation percentages stated along with any previous history of working together over the past 15 years.

### **C. Summary of Project Experience & References**

Provide an experience narrative of three (3) (required) to four (4) projects of similar construction work performed by the firm in the last eight (8) years. The experience highlighted should reflect projects using an alternative delivery model with early contractor involvement during design.

1. Description of the project, including project name, scope, and location, and its similarity to the Project
2. Highlight participation by key staff proposed in this proposal who participated in these projects and their roles and responsibilities
3. Owner's name, address, telephone number, email address and contact person
4. Architectural and Engineering firms on the project
5. Project delivery method used
6. Self-performed work capability
7. Quality Control Program
8. Highlight key trade partners
9. Original contract amount and final contract amount
10. Change order history and amounts – categorized as owner directed or other
11. Disputes, claims and litigation summary
12. Liquidated damages applied

### **D. Project Personnel / Availability**

The commitment of key personnel is critical to the Fort Collins Loveland Water District and the success of its projects. We believe that in hiring a firm, we are not only engaging in their services but also valuing the individuals who will form the project team.

1. Provide an organization chart identifying the structure and titles. The chart should include all resources and their specific roles and responsibilities.
2. Include resumes of potential staff to work on this project (maximum 1-page each), highlighting the following:
  - a. Bio including their background, qualifications, and interests.
  - b. Experience and capabilities on related projects. Provide specific project examples demonstrating this experience.
  - c. Role and responsibility on related projects
  - d. Experience in a significant role on projects using alternative delivery methods with early construction contractor involvement during the design.
  - e. Provide owner references (including name, title, address, email address, and phone number) for key individuals provided.
3. Describe how the project would be managed and who would have primary responsibility for its timely and professional completion.

### **E. Pre-construction Services Experience**

Provide a description of the pre-construction services typically offered for construction projects of similar scope. Describe in detail the firm's experience in the design review process, including experience in constructability assessments, risk management, cost estimates and analysis, and material quotations. The description(s) should include information about software utilized, project management tools, and other processes available to the project team to ensure successful delivery of these services.

## **F. Cost Factors**

1. Provide a detailed rate structure for general contractor services provided during the preconstruction phase and the construction phase of the project. The rate structure should include:
  - a. Fee Schedule of hourly billing rates by category of employee and job title.
  - b. Fee Schedule for sub-consultants by category and job title, if used, with mark-up if applicable.
2. Provide a proposed labor rate escalation approach, if applicable (including subconsultants and subcontractors).
3. Provide a list of direct costs and reimbursable expenses (e.g., travel, printing, postage, etc.). Preapproved travel expenses may be reimbursable as per GSA rates.
4. Provide an overhead and profit markup schedule which details your approach to applying markups to your work scope (e.g. Self-performed, Subcontracted, owned equipment, rented equipment, equipment, specialty items, etc...)

Contractors and key subcontractor firms are expected and required to have a completely open book policy on all pricing of work throughout the duration of the Project. Labor rates and equipment can be negotiated and updated on a yearly basis.

## **G. Safety Program**

Provide an overview of your company's safety program and any additional information that would be useful in showing your approach to a safe work site for both the construction team and onsite District staff. Provide the firm's OSHA reportable accident rate and current worker's compensation insurance multiplier for the last 3 years. Provide a list of all projects in the last 3 years that have received an OSHA citation either to the GC or sub-contractor on the jobsite and provide a narrative of the citations.

## **H. Insurance, Bonding, & Financial Qualifications**

1. Provide a sample insurance certificate outlining coverage and policy limits or a letter from the firm's insurance agency stating limits in the categories listed in the Master Service Agreement (Section IX). Provide the name, address, and phone number of the firm's insurance agent(s).
2. Provide a letter from the bonding agent indicating the firm's bonding capacity is adequate for an individual project concurrently with current and anticipated workloads to undertake this work. Provide the name, address, and phone number of the firm's bonding agent.
3. Provide a brief narrative describing the firm's financial condition and willingness to undertake and complete the Project proposed and to furnish equipment and services in accordance with this RFP. Provide the name, address, and phone number of the firm's banking reference.

## **I. Other Qualifications**

Please provide any information that distinguishes Contractor from its competition and any additional information applicable to this RFP that might be valuable in assessing Contractor's proposal. Explain any concerns the Contractor may have in objectively recommending the best solution.

## **J. Conflicts**

All potential conflicts of interest must be disclosed.

## **K. Contractor Statement**

A Contractor statement form is attached as Section VIII. Complete the form indicating the Contractor hereby acknowledges receipt of the District's Request for Proposal and acknowledges that the Contractor has read and agrees to be fully bound by all the terms, conditions and other provisions set forth in the RFP. This requirement will not be counted toward the page limit.

# **V. ADDITIONAL INSTRUCTIONS FOR CONTRACTORS**

## **A. Contractors/Subcontractors**

Contractors could identify subcontractor partners in their proposal. Please note that the District will contract solely with the awarded Contractor and third-party Independent Cost Estimator (ICE); therefore, subcontractors will be the responsibility of the Contractor.

## **B. Current Standards**

All work and/or materials must meet current standards in force by recognized technical and professional societies, trade and materials supply associations, institutes and organizations, bureaus, and testing laboratories, and national, federal, state, county, and local laws, codes, and ordinances. All work shall be designed in accordance with all current regulatory and District Standards.

## **C. Fees & Licenses**

The successful Contractor shall be responsible for obtaining any necessary licenses, fees or construction permits without additional expense to the District. All equipment shall be properly licensed and insured, carry the appropriate permits, and be placarded as required by law.

## **D. Laws and Regulations**

The Contractor agrees to comply fully with all applicable local, State of Colorado and Federal laws and regulations and municipal ordinances. The Contractor further agrees to comply fully with the Occupational Safety and Health Act, all regulations issued there under and all state laws and regulations enacted and adopted pursuant thereto.

## **E. Agreement & Term**

The intent of the District is to award a contract to a qualified Contractor for the services outlined in this RFP. The Contractor and the District will enter into the Master Services Agreement (example attached in Section IX). This Master Services Agreement will cover the design/preconstruction and construction phases of work. Design/preconstruction and construction work will be conducted in phases, with Task Orders negotiated and issued for each phase of work as the Project progresses. The Master Services Agreement contains the terms and conditions of the contract, a general scope of work, hourly rates, insurance, etc. The District intends for the term of the Master Services Agreement to continue in full force for the duration of the Project.

## **F. Task Order Procedure**

Work will be conducted in phases under the Master Services Agreement and authorized by individual Task Orders as the Project progresses. The Contractor shall provide all personnel, materials, equipment and supplies necessary to complete the services set forth in the applicable Task Orders.

Each Task Order form must include a start and completion date, total cost, and a general summary of work. Subsequent supporting documentation pages may include the Contractor's quote which includes a detailed scope of work, project schedule, deliverables, number of hours, cost detail supporting total cost including hourly rates, personnel details, materials, subcontractors, fee schedules and expenses. Cost factors outlined in the Task Order will be based on the budgetary cost factors submitted in the RFP response and subsequently negotiated and incorporated in the contract. Preconstruction hourly rates, construction labor and equipment rates will be firm for the first year of the Master Services Agreement and may be updated annually in subsequent years based on fair market indices.

It is possible that the District will choose not to incorporate one (1) or more portions of the general scope of services described in this RFP into any contract(s) executed pursuant to this RFP. Similarly, additional similar services may be added to the Master Services Agreement.

## **G. Withdrawal of Proposal**

Proposals may be withdrawn within 48 hours of submission. Following the 48-hour withdrawal period, proposals are binding for a period of 90 days.

## **H. Signature**

The proposal must be signed manually or electronically by an officer or person qualified to bind Contractor/Firm.

## **I. Conflict of Interest**

No officer, employee, or board member shall have a financial interest in the sale to the District of any real or personal property, equipment, material, supplies, or services where such officer or employee exercises directly or indirectly any decision-making authority concerning such sale or any supervisory authority over the services to be rendered. This rule also applies to subcontracts with the District. Soliciting or accepting any gift, gratuity, favor, entertainment, kickback, or monetary value from anyone seeking to do business with the District is prohibited.

## **J. CORA**

The District is a local governmental entity subject to the Colorado Open Records Act, C.R.S §§ 24-72-200.1 et seq. ("CORA"). Any proposals submitted hereunder are subject to public disclosure by the District pursuant to CORA. Respondents may submit one (1) additional complete proposal marked "FOR PUBLIC VIEWING." The respondent may redact text and data deemed confidential or proprietary in this proposal version under CORA. Such a statement does not necessarily exempt such documentation from public disclosure if required by CORA, by order of a court or appropriate jurisdiction, or other applicable law. Generally, under CORA trade secrets, confidential commercial and financial data information is not required to be disclosed by the District. Proposals may not be marked "Confidential" or "Proprietary" in their entirety. Any contract provisions resulting from this proposal request will be public information.

## VI. REVIEW AND ASSESSMENT CRITERIA

Submissions will be evaluated on the following criteria. The awarded firm will be selected based on the proposal that represents the best value to the District.

The rating scale shall be from 1 to 5, with 1 being a poor rating, 3 being an average rating, and 5 being an outstanding rating.

The District reserves the right to act in its best interest and may terminate, modify or suspend the process, reject any or all proposals, modify the terms and conditions of this RFP and selection process and/or waive informalities of any submission.

WEIGHTING FACTOR	QUALIFICATION
30%	Cover Letter, Firm Summary, Summary of Project Experience & References
20%	Project Personnel / Availability
20%	Pre-construction Services Experience
15%	Cost Factors
10%	Safety Program
5%	Insurance, Bonding, & Financial Qualifications / Other Quals / Conflicts

## VII. REFERENCE EVALUATION CRITERIA

Prior to award, the Project Manager will check references using the following criteria. Negative responses from references may impact the award determination.

CRITERIA	STANDARD QUESTIONS
Overall Performance	Would you hire this Contractor again? Did they show the skills required by this Project?
Timetable	Was the original Scope of Work completed within the specified time? Were interim deadlines met in a timely manner?
Completeness	Was the Contractor responsive to client needs; did the Contractor anticipate problems? Were problems solved quickly and effectively?
Budget	Was the original Scope of Work completed within the project budget?
Job Knowledge	If Contractor administered a construction contract, was the project functional upon completion and did it operate properly? Were problems corrected quickly and effectively?

## VIII. CONTRACTOR STATEMENT

Contractor hereby acknowledges receipt of the District's Request for Proposal and acknowledges that Contractor has read and agrees to be fully bound by all of the terms, conditions, and other provisions outlined in the RFP. Additionally, the Contractor makes the following representations to the District:

- a. All the statements and representations made in this proposal are true to the best of Contractor's knowledge and belief.
- b. Contractor commits that it can meet the terms provided in this proposal.
- c. Contractor understands that proposals may be withdrawn within 48 hours of submission. Following the 48-hour withdrawal period, proposals are binding for a period of 90 days.
- d. Contractor understands that any changes to the District's standard Master Services Agreement that are not included in Contractor's proposal shall not be considered.
- e. Contractor further agrees that the method of the award is acceptable.
- f. Contractor also agrees to complete (1) the proposed Master Services Agreement with the District within 45 days of notice of award. If the agreements are not completed and signed within 45 days, the District reserves the right to cancel and award to the next highest-rated Contractor.
- g. Contractor acknowledges receipt of \_\_\_\_ addenda.

Company Name:

Physical Address:

Phone:

Name of Authorized Agent of Contractor:

Signature of Authorized Agent:

Primary Contact for Project:

Title:

Phone:

Email Address:

CONTRACTOR STATEMENT IS TO BE SIGNED & RETURNED WITH YOUR PROPOSAL



**IX. MASTER SERVICES AGREEMENT**

**SEE THE FOLLOWING PAGES**

## **MASTER SERVICES AGREEMENT**

### **TASK ORDER TYPE CONSTRUCTION CONTRACT FOR INTEGRATED PROJECT DELIVERY**

**THIS MASTER SERVICES AGREEMENT** (this “Agreement”) is made as of this **DAY** day of **MONTH**, **YYYY**, by and between **FORT COLLINS-LOVELAND WATER DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado, located in the County of Larimer with a mailing address of 5150 Snead Drive, Fort Collins, Colorado 80525 (“District”), and **CONTRACTOR NAME**, a **COMPANY TYPE**, with a mailing address of **ADDRESS** (“Contractor” and together with District, the “Parties” or either of the Parties, a “Party”).

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the Parties hereto as follows:

#### **1. Services to be Performed.**

a. No services shall be provided by the Contractor as a result of entering into this Agreement alone. Any and all services to be provided by the Contractor shall be set forth in individual Task Orders, as further described in Section 1.c. below, except in emergency circumstances where oral work requests may be issued. Oral requests for emergency services will be confirmed by issuance of a written Task Order within two (2) working days. By entering into this Agreement, the District makes no guarantees or representations as to the number of Task Orders that may be issued or the actual amount of services which will in fact be requested, if any.

b. The Project (as defined in Section 1.d. below) will be delivered utilizing the District’s Integrated Project Delivery (IPD) methodology. IPD is a team approach whereby the Contractor, Design Team, and District work as a cohesive, integrated team focused on risk reduction, value engineering and best value. The cornerstone of IPD is the Project team’s mutual trust, commitment to common goals, and an understanding of each other’s individual expectations and values. The Contractor will be engaged early in the design phase of the Project to support improved cost and schedule estimating, enhanced constructability, and most importantly reduction of risk and uncertainty.

c. The conditions set forth herein shall apply to all services performed by the Contractor on behalf of the District. Such services shall be more particularly described in Task Orders agreed upon in writing by the Parties from time to time. The form of Task Order attached hereto as **Exhibit A** and incorporated herein by this reference, consisting of two (2) pages, shall be used for non-construction services. The form of Task Order attached hereto as **Exhibit B** and incorporated herein by this reference, consisting of fifty-four (54) pages, shall be used for construction services. Each Task Order shall include a description of the services to be performed, the location and time for performance, the amount of payment, any materials to be supplied by the District and any other special circumstances relating to the performance of services. A general scope of services is attached hereto as **Exhibit E**, consisting of two (2) pages, and incorporated herein by this reference.

d. With respect to any construction Task Orders, Contractor shall perform all work as specified or indicated in the Contract Documents, including furnishing means and methods, construction management, labor, equipment, and materials (generally referred to as the “Project”), and shall complete the Project, including any additional work authorized pursuant to Sections 1.f. and 8 below, in accordance

with the terms of this Agreement, the Task Order, and the Contract Documents.

e. Irrespective of references in each Task Order to certain named subcontractors and/or subconsultants, the Contractor shall be solely responsible for performance of all duties hereunder.

f. The District may, at any time during the term of a particular Task Order and without invalidating such Task Order, make changes to the scope of the particular services. Such changes shall be agreed upon in writing by the Parties in a Change Order in the form attached hereto in Section 00950, consisting of one (1) page, and incorporated herein by this reference.

**2. Contract Sum.** No compensation shall be paid by the District as a result of entering into this Agreement alone. The actual amount of compensation to be paid for services performed will be stated on the individual Task Orders.

**3. Project Cost.**

a. The Contractor in collaboration with the District will prepare a Scope of Services and detailed cost estimate for each Task Order. The Task Order will include a detailed Scope of Services, project schedule, deliverables, number of hours, cost detail supporting total cost including hourly rates, personnel details, materials, subcontractors, fee schedules and expenses. Cost factors outlined in the Task Order will be based on the hourly rates and cost factors in **Exhibit F**, attached hereto and incorporated herein by this reference. However, final pricing for each Task Order will be established utilizing the general process outlined below in this Section 3.

b. Unless otherwise provided in a Task Order, the Contract Price for construction services shall equal the Cost of the Work plus a Fixed Percentage Fee (cost-plus fixed percentage), which shall be paid by the District in accordance with the Contract Documents, in current funds.

c. Unless otherwise provided in a Task Order, compensation for non-construction services shall be based on an hourly fee to be charged for time attributed to each task. Reasonable costs incurred by the Contractor as a direct result of providing the services, such as travel, reproduction, communication and outside services, will be reimbursed by District at cost, unless otherwise provided in the Task Order.

d. The District shall provide no benefits to the Contractor other than the compensation stated in the applicable Task Order.

e. The hourly rates stated in **Exhibit F** will be firm for the initial year of the Agreement. The hourly rates are subject to negotiation and adjustment annually. On an annual basis, ninety (90) days prior to the anniversary date of the Agreement or upon submittal of a new Task Order, the Contractor shall have the opportunity to propose changes to the hourly rates based on local and regional pricing indices. The Parties shall negotiate any changes to the rates in good faith. Any changes to the hourly rates in **Exhibit F** must be agreed upon, in advance, in writing by the Parties.

f. Each Task Order greater than \$300,000 will be evaluated utilizing an Independent Cost Estimate ("ICE") to assist in determining the reasonableness of the costs. In addition, at the District's

discretion, an ICE may be performed at critical milestones during the Project, regardless of dollar amount. The ICE will be performed by a third-party ICE consultant selected by the District. The ICE component adds a layer of transparency and accountability to the project, ensuring that the project costs are realistic and well-managed.

g. Throughout the Project, all costing will be performed on an 'open book' basis with complete transparency as to the Contractor's costs.

h. During the term of this Agreement and for a period of three (3) years after Final Acceptance of a Project, the District and/or District's representative shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Contractor's records, financial books, receipts, subcontracts, purchase orders, and other documentation related to the Project.

4. **Contract Period.** This Agreement shall commence MONTH DD, YYYY, and shall continue in full force and effect until MONTH, DD, YYYY, unless sooner terminated as herein provided. The Parties will endeavor to review and discuss the Contractor's and its subcontractor's performance at least annually on or about the anniversary date of the Agreement, but failure to do so shall not be a breach of this Agreement.

5. **Payments and Retainage.**

a. **Construction Task Orders.**

1. For construction Task Orders in excess of \$150,000, an amount equal to five percent (5%) of each progress payment made on the Contract Price shall be retained by the District. The District shall pay the remaining amount of each progress payment to Contractor if, in the opinion of Project Manager and District, satisfactory progress is being made on the Project. Such retainage of the Contract Price shall be held by the District until the Project is completed and finally accepted by the District in accordance with the provisions hereof. The District shall pay the full amount of such retainage to Contractor within sixty (60) days of final completion and acceptance, except to the extent of any claims filed pursuant to Section 38-26-107, C.R.S. Any release of retainage to Contractor or a subcontractor prior to final payment shall, in addition to any other requirements of the Contract Documents, require written approval from the surety furnishing bonds pursuant to Section 23.

2. The Contractor will submit invoices monthly for services performed. Each invoice for construction Task Orders shall be accompanied by a completed Application for Payment (the "Application for Payment") in the form attached as Section 00960 and incorporated herein by this reference.

3. Payment shall be made by the District upon review of the services and corresponding supporting documentation provided by the Contractor to substantiate the expense to the District's reasonable satisfaction. Such documentation will include subcontractor invoices, material invoices, evidence of

material receipts, and detailed cost break-down for self- performed work. Final payment and release of retainage will be on a Task Order basis subject to the requirements of Section 6 below and the General Conditions.

4. Payment of undisputed Applications for Payment and invoices shall be made by the District within thirty (30) days of receipt of each invoice. All invoices shall be emailed to [enginvoices@fclwd.com](mailto:enginvoices@fclwd.com) with a copy to the District Project Manager.

b. Non-Construction Task Orders.

1. The Contractor will submit invoices monthly for services performed. All invoices shall be emailed to [enginvoices@fclwd.com](mailto:enginvoices@fclwd.com) with a copy to the District Project Manager.

2. Payment of invoices shall be made by the District within thirty (30) days of receipt of each invoice, subject to Section 5.b.4. below.

3. No partial payment made by the District shall be considered final acceptance or approval of that part of the Scope of Services paid for or shall relieve the Contractor of any of its obligations under this Agreement.

4. Notwithstanding any other terms of this Agreement or any Task Orders, the District may withhold any payment (whether a progress payment or final payment) for to the Contractor if any one or more of the following conditions exists:

- i. The Contractor is in default of any of its obligations under this Agreement, including without limitation the obligation to maintain insurance and provide Certificates of Insurance to the District in accordance with Section 23.
- ii. Any part of such payment is attributable to services that are not performed in accordance with the terms of this Agreement and the applicable Task Order. The District will pay for any portion of the services performed in conformance with this Agreement and such Task Order.
- iii. The Contractor has failed to make payments promptly to any third party used to perform any portion of the services hereunder, subject to Section 15, for which the District has made payments to the Contractor.

**6. Substantial Completion and Final Payment & Acceptance.** Each construction Task Order shall define the Contract Times, including the number of days or dates for the work of that Task Order to be Substantially Complete, as provided in the General Conditions, and completed and ready for Final Payment and Acceptance in accordance with the General Conditions.

a. Upon completion of the Project and Contractor's submittal of notice thereof to Project Manager and District, Project Manager shall inspect the Project and reject any portion of

performance not in conformity with the Contract Documents. Defective materials, equipment or work shall be remedied immediately by Contractor before final payment. District shall make final payment to Contractor within thirty (30) days after (i) final acceptance of performance by District as specified in this Section 6 and (ii) receipt of Project Manager's confirmation to District that the Project has been completed satisfactorily. Final payment shall not, however, be due until Contractor has delivered to District a complete release of all claims or liens against the Project and has produced satisfactory receipts, waivers or lien releases indicating final and total payment to all subcontractors and persons who have furnished materials, labor, and equipment on which a lien or claim might potentially be filed in form acceptable to District. The District shall, no later than ten (10) days before final payment is made, publish a notice of final payment at least twice in a legal newspaper of general circulation in any county where the work was contracted for or performed pursuant to Section 38-26-107, C.R.S.

b. By making final payment, District waives all claims against Contractor, except those expressly declared to Contractor in writing or those arising out of: (i) defective performance appearing after final acceptance; (ii) performance in patent noncompliance with Contract Documents, unless expressly waived by District; (iii) outstanding claims of any nature, including but not limited to claims for property damage or personal injury arising during the construction period or liens or claims against the Project; or (iv) Contractor's failure to execute any warranty, guarantee or bond or to provide insurance or other indemnification required by the Contract Documents. By accepting final payment, Contractor waives all claims against District, except those expressly declared to District in writing received by District prior to final payment. Notwithstanding the foregoing, Contractor shall work with the District in good faith to resolve any claims it may have prior to final payment being made.

c. Final acceptance of the Project shall follow inspection and approval of Contractor's performance by Project Manager, along with inspection by appropriate manufacturers' representatives and governmental officials pursuant to local, State and federal requirements as necessary. Final acceptance occurs when Contractor's work fully conforms with the requirements of the Contract Documents. Final acceptance by District is subject to the provisions of this Section 6 and in no manner affects or releases any warranty or guarantee with Contractor or manufacturers or suppliers of Project equipment or materials.

d. When presented for final acceptance, the Project shall be delivered to District in complete compliance with the Contract Documents free from any lien, claim or encumbrance, whether in existence or subsequently established by law, statute, ordinance or otherwise. Notwithstanding the foregoing, nothing in the Contract Documents shall give Contractor or any subcontractor, laborer, supplier, manufacturer or other person or entity, either expressly or by implication, any right to assert a lien, claim or encumbrance against the Project.

**7. Liquidated Damages.** Liquidated damages will be discussed and negotiated prior to the issuance of the construction task order. Below is typical language used by the District and subject to change based on project needs:

a. Contractor shall commence performance after the "Commencement Date" or Notice to Proceed in Exhibit B and shall diligently prosecute all work through Substantial and Final completion as noted in Exhibit B. For purposes of this Agreement, (i) "Substantial Completion" shall be

the time at which the Project (or a specified part thereof) has progressed to the point where, in the opinion of Project Manager, the Project (or a specified part thereof) is sufficiently complete in accordance with the Contract Documents, so that the Project (or a specified part thereof) can be utilized by District for the purposes for which it is intended; and (ii) "Final Completion" shall be the time at which District accepts the Project upon confirmation from Project Manager and Contractor that the Project is totally complete in accordance with Contract Documents.

b. If Contractor fails to perform the Project within the performance deadlines identified in Exhibit B or any extension thereof (the "Performance Deadlines"), Contractor shall pay to District as liquidated damages (and not as a penalty) for ordinary and general damages and inconvenience such amounts as defined below.

1. Late startup of all major equipment: TBD
2. Late Substantial Completion: TBD
3. Late Final Completion: TBD

These liquidated damages are based upon District's evaluation of its likely losses in the event the Performance Deadlines are not met. The liquidated damages herein established are agreed to by Contractor after full discussion of the implication of this Section. The failure to perform the work and complete the Project by the Performance Deadlines will cause significant damage to District. District and Contractor agree that such actual damages caused by Contractor's failure to meet the Performance Deadlines would reasonably likely include, without limitation, the costs for additional construction management and other District representative/employee time; the costs for third-party consultants' time; inefficiency and inconvenience damages to District's business operations; damages to District's reputation with third-parties (including governmental entities with regulatory jurisdiction over District), as well as other potential actual damages to District reasonably associated with the subject matter of this Agreement. Contractor acknowledges that the liquidated damages established herein are a reasonable pre-estimate of the detriment District will suffer in the event Contractor fails to perform the work and complete the Project by the Performance Deadlines and, after a full discussion of the implications of this section, further acknowledges that it would be impractical and extremely difficult to estimate precisely the damages that District might suffer by reason of Contractor's failure to perform the work and complete the Project by the Performance Deadlines. The liquidated damages established herein are intended to be and are cumulative and shall be in addition to any other remedy enforceable at law under this Agreement. Liquidated damages do not include any sums of money to reimburse District for extra costs which District may become obligated to pay on other contracts, which are delayed or extended because of Contractor's failure to perform the work and complete the Project by the Performance Deadlines. Should District incur such other additional costs because of delays or extensions to other contracts resulting from Contractor's unexcused failure or delay in performance, District will assess any such extra costs against Contractor in addition to the liquidated damages provided for herein.

c. No extension of time to complete performance shall be granted under normal circumstances. Extensions of time to complete performance may be authorized by District in its sole discretion for any actual period of delay on an occurrence basis for: (i) adverse weather or climatic conditions not reasonably anticipated; (ii) major labor disputes; (iii) acts of God; (iv) detrimental acts of



District; (v) acts of another contractor in the performance of related work under a separate contract with District; (vi) delays resulting from the intervention of governmental agencies in the performance of work on the Project, if not caused by Contractor or its subcontractors; or (vii) other extraordinary circumstances beyond Contractor's reasonable control. Foreseeable weather delays and delays or failures in delivery of equipment or materials shall not constitute cause for an extension of time to complete performance or for an adjustment to the Contract Price. Any request for an extension of time to complete performance shall be submitted in writing to Project Manager for District's approval within ten (10) days after such occurrence and shall be accompanied and supported by a schedule analysis based on the critical path method, which shows how and where the delay occurred on the then-critical path and its effect on any milestone date or the date of Substantial Completion. The decision of District shall be conclusive and binding upon Contractor.

**8. Appropriations for Construction Task Orders; Change Orders.** Any and all construction Task Orders are subject to Section 24-91-103.6, C.R.S., and in accordance therewith:

a. District represents that it has appropriated money equal to or in excess of the Contract Price for the work as specified in the Task Orders.

b. District shall not issue any Change Order or other directive (other than a clarification) requiring additional compensable work to be performed that will cause the aggregate amount payable under this Agreement to exceed the amount appropriated for the original Contract Price and any subsequent appropriations, unless:

1. Contractor is given written assurance by District that lawful appropriations to cover the costs of the additional work have been made and are available prior to performance of the additional work; or

2. Such additional work is covered by the following remedy-granting provision: Contractor may request, in writing, a letter from District explaining the expected sources of funding for the additional work. In the event District does not provide such written assurance reasonably satisfactory to Contractor within five (5) days of Contractor's request, Contractor may stop work until such time as District provides satisfactory assurances. Contractor's acceptance of a Change Order in accordance with any assurances provided under this paragraph shall not limit or restrict Contractor from making a claim under the Contract Documents for an adjustment in the Contract Price or the Performance Deadlines or otherwise for expenses or damages directly attributable to Contractor's stoppage of the work as permitted hereunder.

c. For any Change Order or other directive (other than a clarification) that requires additional compensable work to be performed, District shall reimburse Contractor for Contractor's costs on the periodic basis set forth in the Contract Documents for all additional directed work performed until the Change Order is finalized. In no instance shall the periodic reimbursement be required before Contractor has submitted an estimate of cost to District for the additional compensable work to be performed.

**9. Annual Appropriation for Non-Construction Task Orders.** The District's obligations hereunder with respect to non-construction Task Orders are subject to the annual appropriation of funds necessary for the performance thereof, which appropriations shall be made in the sole discretion of the District's Board of Directors.

**10. Delay.** Delays shall be in accordance with Section 00700 of the General Conditions, Article 11 Change of Contract Times.

**11. Default.** District may give written notice of grounds for default to Contractor at any time if: (i) Contractor fails to perform in an adequate or specified manner or proceeds in willful violation of the Contract Documents or terms of this Agreement, as determined by Project Manager or District; (ii) Project Manager advises District that performance of work on the Project is being delayed unnecessarily or that Contractor is executing its responsibilities in bad faith or contrary to the intent of this Agreement; (iii) performance is not fully completed within the period of time specified for completion under the Task Order; (iv) work to be performed by Contractor is assigned without District's consent; (v) Contractor is insolvent or files for bankruptcy; (vi) Contractor makes a general assignment of assets for the benefit of creditors; (vii) a receiver is appointed for Contractor; or (viii) other serious and reasonable cause exists which jeopardizes completion of the Project. If Contractor does not remedy or otherwise correct the grounds for default within such period of time as specified by the District, the District may terminate this Agreement and direct Contractor to discontinue any further work on the Project, and Contractor shall immediately stop all work on the Project and forfeit all rights under this Agreement. District, in its discretion, may complete the Project, or may request the surety of Contractor to complete the Project, or may contract with others to complete the Project at the expense of Contractor and its surety. Any increase in costs over the Contract Price and any actual and/or special damages incurred by District as a consequence of such default, including reasonable attorneys' fees, shall be paid and satisfied in full by Contractor and its surety.

**12. Termination.** At any time, District may, without cause and without prejudice to any other right or remedy hereunder, elect to terminate this Agreement. In such event, District shall give written notice of Project termination to Contractor at least five (5) days in advance of the Project termination date. Such notice may include specific instructions as to work to be completed and other winding-up matters. In the absence of any contrary instructions, Contractor shall place no further orders or subcontracts, shall terminate all orders and subcontracts to the extent they relate to terminated work, and shall stop work on the date and in accordance with directions specified in the notice. Contractor shall cooperate with District to transfer all of Contractor's rights and interests in any orders, subcontracts or work as directed by District. District shall pay Contractor for the performance of all work through the Project termination date and for such additional amounts as, in the opinion of Project Manager, are reasonable to compensate Contractor for the termination of this Agreement. Final payment to Contractor shall be made in accordance with Section 6.

**13. District Representative/Project Manager.** Official authority for the administration of all performance under this Agreement is hereby delegated to the District's "Project Manager," as identified in the Task Order. Throughout the construction period, Project Manager, or such other duly authorized representative of District, may inspect the Project and shall consult with Contractor in regard to any inquiries, directions, or interpretations of the Contract Documents.

**14. Subcontractors, Suppliers, and Other.** Contractor shall state all major subcontractors, suppliers, and other individuals or entities to be engaged to work on the Project in the applicable Task Order, which are subject to the District's reasonable acceptance. Contractor shall not substitute any subcontractor, supplier, or other individual or entity previously accepted by the District without the District's prior written consent, which shall not be unreasonably withheld. The District's acceptance of any such subcontractor, supplier, or other individual or entity so identified may be withheld or revoked on the basis of reasonable objection after due investigation. In such event, Contractor shall submit an acceptable replacement for the rejected subcontractor, supplier, or other individual or entity, and the Contract Price may be adjusted by any reasonable difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by District of any such subcontractor, supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of District or Project Manager to reject defective work. All contracts between Contractor and subcontractors shall conform explicitly to all applicable provisions of this Agreement and the Contract Documents. Contractor shall be responsible and held liable for any bonding, insurance, warranties, indemnities, progress payments and completion of performance of or to such subcontractors, suppliers, or other individuals or entities. Upon receipt of progress and final payments from District, Contractor shall disburse the same immediately to subcontractors, suppliers, and other individuals and entities without any requirement of District to supervise the same. No contractual relationship shall exist between District and any subcontractor, supplier, or other individual or entity because of the subcontracting of any part of the Project work.

**15. Assignment.** Contractor shall not, at any time, assign any interest in this Agreement to any person or entity without the prior written consent of the District. The terms of this Agreement shall inure to and be binding upon any successors and assigns of the Parties.

**16. No Third-Party Beneficiaries.** The Parties to this Agreement do not intend to extend any benefits to any person, not a Party to this Agreement. No person or entity, other than the Parties to this Agreement, shall have any rights, legal or equitable, to enforce or rely on any provision of this Agreement.

**17. Warranty and Guarantee.** Contractor hereby represents, warrants, and guarantees to District all workmanship, equipment and materials on or made a part of the Project and its structures for a period of two (2) years following Final Completion of the Project for workmanship. Such warranty and guarantee shall be construed to include, but is not limited to, representations that all workmanship, equipment, and materials are of good quality, free from any defects or irregularities, and in strict conformity with the Contract Documents. In addition, Contractor will assign all manufacturer warranties on equipment and materials to District for original manufacturer warranties that exceed 2-years.

a. If any defect in workmanship, Contractor shall remedy or otherwise correct such defect without cost to District within such reasonable period of time as specified by District in writing. If Contractor fails to repair such defects within such period of time as is specified by District, District may repair such defect or contract for such repairs at the expense of Contractor and its surety.

b. If any defect in equipment or material arises during the 2-year warranty period specified above, Contractor shall remedy or otherwise correct such defect in collaboration with the IPD Project team. If correction of the defect necessitates expenditure of funds by the District, it shall be

processed as a Change Order subject to District approval. The performance bond specified in Section 24 shall remain in full force and effect during the 2-year period of this warranty and guarantee, including any period necessary to remedy or otherwise correct any defects. Contractor shall provide such warranty and guarantee on District's behalf separate and apart from other warranties, guarantees and surety agreements entered into independently between District and any manufacturer or supplier.

**18. Waiver.** No waiver by either Party of any right, term or condition of this Agreement shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

**19. Remedies.** None of the remedies provided to either Party under this Agreement shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such Party may then be entitled. Every obligation assumed by, or imposed upon, either Party shall be enforceable by any appropriate action, petition or proceeding at law or in equity, including specific performance. If the District does not pursue a particular remedy contemporaneously with a default and/or any other issue that may arise, the District does not waive the right to pursue the remedy at a later date.

**20. Binding Effect.** This writing, together with the exhibits and attachments hereto, constitutes the entire agreement between the Parties and shall be binding upon said Parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representative, successors and assigns of said Parties.

**21. Amendment.** This Agreement may be amended, from time to time, by agreement between the Parties. No amendment, modification or alteration of this Agreement shall be binding upon the Parties unless the same is in writing and approved by the duly authorized representatives of each Party. No document executed subsequent to this Agreement shall be interpreted to amend, modify or alter the terms of this Agreement, unless express reference to amending the terms of this Agreement is made in such document.

**22. Indemnification; No Waiver of Liability or Immunity.** Contractor agrees to indemnify, defend, and hold harmless the District and its officers, directors, and from all costs, claims, damages, judgments, losses, liability and expenses of every nature, including reasonable attorneys' fees, arising at any time from any negligent act or omission of the Contractor, its agents, representatives, subcontractors, or suppliers. Contractor shall upon request of the District promptly assume the defense, with defense counsel reasonably acceptable to District, of any claim, action, proceeding or suit that is brought against the District arising from any negligent act or omission of the Contractor, its agents, representatives, subcontractors, or suppliers. Contractor's indemnification shall only be to the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the Contractor or its agents, representatives, subcontractors, or suppliers. Contractor's obligations under this Section shall be to the fullest extent permitted by law and shall survive termination or expiration of this Agreement. Nothing in this Section shall be construed to require any indemnification that would make this provision void or unenforceable or to eliminate or reduce the indemnification or rights which the District has by law.

Notwithstanding any other provision contained in this Agreement or a Task Order, the District does not agree to defend, indemnify, or hold harmless the Contractor or waive or limit its rights and/or claims in

any respect regarding the Contractor's liability (either by type of liability or amount). District is relying on and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, defenses and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to the District or its officers or employees.

**23. Insurance.**

a. During the term of this Agreement, Contractor shall purchase and maintain, at its own cost and expense, the following:

b. Workers' compensation insurance for its employees, if any, as required by Colorado law with limits of at least \$500,000 per injury or illness an employee suffers as a result of providing the services hereunder, with a \$500,000 aggregate per occurrence;

c. Employer's liability insurance with limits of at least \$500,000 per employee/accident and \$1,000,000 aggregate;

d. Commercial general liability insurance covering, without limitation, premises operations, products-completed operations, contractual liability insuring the obligations assumed by the Contractor under this Agreement, personal and advertising injury, and broad form property damage, with limits of at least \$2,000,000 per occurrence for bodily injury, death or damage to property; \$2,000,000 per occurrence for personal and advertising injury; \$2,000,000 products-completed operations aggregate; and \$2,000,000 general aggregate;

e. Automobile liability insurance covering all owned, hired and non-owned vehicles used in the performance of the work under this Agreement with a limit of at least \$2,000,000 combined per accident for bodily injury and property damage;

f. For above ground construction Task Orders, unless otherwise set forth therein, builder's risk insurance for protection against damage, explosion, fire, vandalism, theft and other dangers ordinarily included under such coverage, including loss of use resulting therefrom, to the full insurable value of all property, structures, equipment and material of the District within the Contractor's control, designating District as a "loss payee" to the extent of District's interest thereunder; and

g. The insurance required herein may be satisfied through any combination of primary and excess/umbrella liability policies.

h. The insurance required herein shall be written by an insurance company or companies that (i) have an A.M. Best Company rating of "A-VII" or better, and (ii) are authorized to issue insurance in the State of Colorado.

i. The District, its directors, officers, employees, Project Manager, and any additional entities expressly identified in the Task Order shall be endorsed as "Additional Insureds" under the (i) commercial general liability insurance policy for both ongoing and completed performance and/or operations for a period of two (2) years, and (ii) automobile liability policy.

j. The Contractor shall provide a waiver of subrogation endorsement, or its equivalent, under the (i) workers' compensation; (ii) commercial general liability; and (iii) automobile liability insurance policies in favor of the District, its directors, officers, agents, and employees.

k. All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the District and its directors, officers, agents, and employees. Any insurance maintained by the District and its directors, officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.

l. Prior to commencement of work under any Task Order, Contractor shall provide certificates of insurance satisfactory to the District that clearly evidence all insurance coverages required herein, including but not limited to endorsements (individually and collectively, "Certificates of Insurance"). Contractor agrees that, until the District is supplied with Certificates of Insurance, no payment under this Agreement will be made by the District. Contractor will provide the District with updated Certificates of Insurance within ten (10) calendar days of the anniversary of the effective date of coverage should that date fall during the term of this Agreement. Failure of the District to require Certificates of Insurance or to identify a deficiency in coverage shall not relieve the Contractor from its responsibility to provide the specific insurance coverages set forth herein.

m. In the event any portion of the work is performed by a subcontractor, the Contractor shall be responsible for any liability directly or indirectly arising out of such work, which liability is not covered by the subcontractor's insurance policies.

n. The insurance policies afforded hereunder shall not be cancelled or allowed to expire unless at least thirty (30) days' prior written notice has been delivered to the District, except in the event of cancellation due to non-payment of a premium, in which case notice shall be given to the District no later than ten (10) days prior to cancellation of the policy. Upon receipt of any notice of cancellation or non-renewal, the Contractor shall, within five (5) days, procure other policies of insurance as necessary to comply with this Section 23 and provide Certificates of Insurance evidencing the same to the District.

**24. Performance, Payment, and Warranty Bond.** Per each individual construction Task Order and prior to commencement of performance on such Task Order, Contractor shall provide to District a general performance, payment and warranty bond executed by Contractor and an acceptable corporate surety, or collateral approved by District, in the full amount of the Contract Price, including provisions for any adjustment of the Contract Price in accordance with the terms of this Agreement. Such bond shall expressly guarantee: (i) faithful performance of this Agreement and completion of the Project in complete compliance with the Contract Documents; (ii) repair and replacement, if required, or payment of the costs of all defective equipment, materials and work performed on the Project or as provided under any warranty, guarantee or other Contract Document for the full warranty and guarantee period; and (iii) payment to all persons performing labor and furnishing materials, supplies, tools and equipment in connection with the Project. Contractor shall obtain such bond on District's behalf separate and apart from any similar bond or surety or warranty agreement entered into independently between District and any manufacturer or supplier. District may, in its discretion, require that the bond guaranteeing payment to all persons performing labor and furnishing materials, supplies, tools and equipment in connection with the Project be separate from the bond guaranteeing performance and warranting the work.

Notwithstanding anything contained within the bonds to the contrary, such bonds are required, in part, by and shall comply with the minimum requirements of Section 38-26-106, C.R.S.

**25. Entire Agreement.** This Agreement and all other Contract Documents constitute the entire agreement between the Parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings, or agreements pertaining to such matters are merged into and superseded by this Agreement and the other Contract Documents.

**26. Severability.** If any term, section or other provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of this Agreement.

**27. Colorado Labor.** If the Project is financed in whole or in part by funds of the State or any county, municipality of the State, school district, special district, or other political subdivision of the State, and for which an appropriation or expenditure for the Project will exceed \$500,000 for any fiscal year, Colorado labor shall be employed to perform at least eighty percent (80%) of the work, unless such requirement is waived by the District in accordance with Section 8-17-101(1), C.R.S. "Colorado labor" means any person who is a resident of the State at the time of the Project. A "resident of the State" is a person who can provide a valid Colorado driver's license, a valid State-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty (30) days.

**28. Participation in Certified Apprentice Training Program.** Applies to vertical construction and Specialty Trades only-if the District used a prequalification process pursuant to Section 32-1-1805, C.R.S., to select and award a construction Task Order, by execution of this Agreement, Contractor represents, warrants, and agrees that the Contractor shall comply with the provisions of Section 32-1-1805(3), C.R.S., relating to access to apprentice training programs certified by the U.S. Department of Labor or a comparable alternative. If the Contract Price is \$250,000 or more, Contractor represents, warrants, and agrees that all subcontractors, at any tier, shall have similar access to either a certified program or comparable alternative.

**29. Taxes, Licenses, Permits, Regulations.** In all operations connected with the Project, Contractor shall pay all fees, charges and taxes imposed by law, except for sales and use taxes from which District or the Project are exempt and shall obtain all licenses and permits necessary for completion of the Project, including payment of all fees, unless otherwise specified by the Contract Documents or Project Manager. Contractor shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities, whether local, State or federal, relating to the performance of work on the Project and particularly for compliance with those laws concerning the environment, stormwater management permits, workmen's compensation, safety and health, labor, immigration and equal employment opportunity. District shall, upon request, furnish Contractor with a copy of its certificate of sales and use tax exemption. District shall not reimburse Contractor for any sales or use taxes paid to the State or any county or municipality from which District or the Project are exempt.

**30. Special Provisions.** Special provisions or conditions relating to the services to be performed pursuant to this Agreement are set forth in **Exhibit C**, attached hereto and incorporated herein by this reference, Section 00700 General Conditions, consisting of nineteen (19) pages, and **Exhibit D**, attached hereto and incorporated herein by this reference, Section 00800 Supplementary Conditions,



consisting of six (6) pages.

**31. Order of Precedence.** The terms of this Agreement shall take precedence in the event of a conflict or inconsistency between the terms of this Agreement, a Task Order, an attachment, or any provisions or conditions incorporated by reference herein. In the event of conflicting or ambiguous provisions specifications will take precedence over the drawings and addenda will take precedence over both. Notwithstanding the foregoing, the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent. On all drawings, figures take precedence over scaled dimensions. If the Project is financed in whole or in part by a federal or State grant, any provision of the Contract Documents that is in conflict with the terms of such grant shall be inapplicable.

**32. Time.** Unless otherwise expressly provided, any reference herein to days shall mean calendar days. All times stated in this Agreement are of the essence.

**33. Counterparts; Electronic Signatures; Electronic Records.** This Agreement may be executed in two counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101, et seq., C.R.S. This Agreement and any other documents requiring a signature may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of this Agreement, solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

**34. Duly Authorized Signatories.** By execution of this Agreement, the undersigned each individually represents that he or she is duly authorized to execute and deliver this Agreement and that the subject Party shall be bound by the signatory's execution of this Agreement.

**35. Law; Venue.** The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement and any Task Orders. Venue for any dispute between the Parties arising out of or relating to this Agreement or any Task Orders shall be in the State of Colorado District Court for Larimer County.

**36. Independent Contractor.** The Contractor agrees that the services to be performed by the Contractor pursuant to any and all Task Orders are those of an independent contractor and not of an employee of the District. The Contractor is obligated to pay federal and state income tax on any moneys earned pursuant to any Task Orders. Neither the Contractor nor its employees, if any, are entitled to workers' compensation benefits from the District for the performance of the services described in any Task Orders.

**37. Section Headings.** The section headings in this Agreement have been inserted for convenience of reference only and shall not affect the meaning or interpretation of any part of this Agreement.

**38. Notice.** Any notice required hereunder shall be in writing delivered to the applicable Party at the address set forth at the beginning of this Agreement or as changed pursuant to the provisions of this Section.

**39. COVID-19 and Infectious Diseases.** The Contract Sum and Contract Time are based on Contractor's compliance with all currently enacted governmental health and safety orders, laws, requirements, and guidance associated with COVID-19 or other infectious diseases. The Contract Sum and Contract Time do not contemplate, and specifically exclude, all other cost or schedule impacts caused by COVID-19 or other infectious disease outbreaks, including, but not limited to, future changes to governmental health and safety orders, laws, requirements, and guidance; labor or material shortages; or other disruptions to the Work. The Contract Time will be equitably adjusted for schedule impacts and disruptions caused by COVID-19 or other infectious disease outbreaks. In addition, the Contract Sum will be equitably adjusted for cost impacts caused by future changes to governmental health and safety orders, laws, requirements, and guidance.

**40. Market Conditions.** As of the date of this Contract, certain markets providing essential materials to the Project are experiencing or are expected to experience significant, industry-wide economic fluctuation during the performance of this Contract that may impact price, availability and delivery time frames. This Article provides for a fair allocation of the risk of such market conditions between Owner and Contractor.

a. The Contract Price is based on current material and equipment costs with reasonable margins for price fluctuations. However, if there is a Significant Material Cost Increase (defined below) for reasons beyond the control of Contractor and provided such fluctuation is not due to Contractor's procrastination or other failure within its control, Contractor will be entitled to an appropriate adjustment to the Contract Price. A "Significant Material Cost Increase" means any increase from the anticipated price for any particular material or equipment used in the calculation of the Contract Price that exceeds 10%. If there is a Significant Material Cost Increase, the Contract Price shall be increased in the amount by which Contractor's actual cost for that material or equipment exceeds the price used in the Contract Price.

b. If Contractor is delayed at any time in the commencement or progress of the Work due to a delay in the delivery of, or unavailability of, material or equipment beyond the control of and without the fault of Contractor or its Subcontractors, Contractor shall be entitled to an equitable extension of the Contract Time and an equitable adjustment of the Contract Price. Owner and Contractor shall undertake reasonable steps to mitigate the effect of such delays.

[Signature Page Follows]

**FORT COLLINS LOVELAND WATER DISTRICT**

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

Chris Pletcher, General Manager

Date: \_\_\_\_\_

**COMPANY**

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

First Last, Title

Date: \_\_\_\_\_

**EXHIBIT A**  
**TASK ORDER FORM (Construction less than \$50k or Design Services)**  
**PURSUANT TO A MASTER SERVICES AGREEMENT BETWEEN**  
**FORT COLLINS-LOVELAND WATER DISTRICT AND “Contractor”**

**PROJECT TITLE:** XXXXX

**TASK ORDER NUMBER:** XXXXX

**ORIGINAL BID/RFP NUMBER & NAME:** “Project Name”

**MASTER AGREEMENT EFFECTIVE DATE:** Month DD, YYY

**CONTRACTOR REPRESENTATIVE:** XXXXX

**ARCHITECT/ENGINEER:** XXXXX

**PROJECT MANAGER:** District PM

**MAXIMUM FEE: (time and reimbursable direct costs):** XXXXX

**TASK ORDER COMMENCEMENT DATE:** XXXXX

**TASK ORDER COMPLETION DATE:** XXXXX

**PROJECT DESCRIPTION/SCOPE OF SERVICES:** XXXXX

☐ **CONTRACT <\$50k or Design Services**

☐ **CONTRACT >\$50k BONDS**

☐ **PERFORMANCE BOND**

☐ **PAYMENT BOND**

☐ **WARRANTY BOND (through 2-Year Warranty from Final Acceptance)**

**NOTICE OF AWARD:**

**Date of this Document**

**SUBSTANTIAL COMPLETION DATE:**

XXXXX

**FINAL COMPLETION DATE:**

XXXXX

☐ **CONTRACT >\$150k HOLD 5% RETAINAGE**

Contractor agrees to perform the services identified above and on the attached forms in accordance with the terms and conditions contained herein and in the Master Services Agreement between the Parties. In the event of a conflict between or ambiguity in the terms of the Master Services Agreement and this Task Order (including the attached forms), the Master Services Agreement shall control.

The attached forms consisting of XX(XX) pages are hereby accepted and incorporated herein, by this reference, and Notice to Proceed is hereby given after all Parties have signed this document.

**FORT COLLINS LOVELAND WATER DISTRICT**

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

Chris Pletcher, General Manager

Date: \_\_\_\_\_

**ATTEST:**

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

Finance Director (If over \$500k)

Date: \_\_\_\_\_

By execution of this Agreement, the undersigned each individually represents that he or she is duly authorized to execute and deliver this Agreement and that the subject Party shall be bound by the signatory's execution of this Agreement.

**COMPANY**

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

Frist Last, Title

Date: \_\_\_\_\_

**EXHIBIT B**  
**TASK ORDER FORM (Construction over \$50,000)**

**FORT COLLINS-LOVELAND  
WATER DISTRICT  
CONSTRUCTION TASK  
ORDER**

**PROJECT  
TITLE**

**TASK ORDER NO. PM'S TRACKING #**

**CONTRACTOR: "Name"**

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### **ADDITIONAL DOCUMENTS**

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## **SECTION 00500**

### **CONSTRUCTION TASK ORDER AGREEMENT FORMS**

- |       |   |
|-------|---|
| 00525 | Task Order, Notice of Award & Bid Schedule<br>Attachment A-Bid Schedule |
| 00530 | Task Order Notice to Proceed  |

**SECTION 00525**  
**TASK ORDER, NOTICE OF AWARD AND BID SCHEDULE**  
PURSUANT TO A MASTER SERVICES AGREEMENT BETWEEN  
FORT COLLINS-LOVELAND WATER DISTRICT AND "Contractor"

**PROJECT TITLE:** XXXXX

**TASK ORDER NUMBER:** XXXXX

**ORIGINAL BID/RFP NUMBER & NAME:** "Project Name"

**MASTER AGREEMENT EFFECTIVE DATE:** Month DD, YYYY

**CONTRACTOR REPRESENTATIVE:** XXXXX

**ARCHITECT/ENGINEER:** XXXXX

**PROJECT MANAGER:** District PM

**MAXIMUM FEE: (time and reimbursable direct costs):** XXXXX

**TASK ORDER COMMENCEMENT DATE:** XXXXX

**TASK ORDER COMPLETION DATE:** XXXXX

**PROJECT DESCRIPTION/SCOPE OF SERVICES:** XXXXX

☐ **CONTRACT <\$50k or Design Services**

☐ **CONTRACT >\$50k BONDS**

☐ PERFORMANCE BOND

☐ PAYMENT BOND

☐ WARRANTY BOND (through 2-Year Warranty from Final Acceptance)

NOTICE OF AWARD: Date of this Document

SUBSTANTIAL COMPLETION DATE: XXXXX

FINAL COMPLETION DATE: XXXXX

☐ **CONTRACT >\$150k HOLD 5% RETAINAGE**

Contractor agrees to perform the services identified above and on the attached forms in accordance with the terms and conditions contained herein and in the Master Services Agreement between the Parties. In the event of a conflict between or ambiguity in the terms of the Master Services Agreement and this Task Order (including the attached forms), the Master Services Agreement shall control.

The attached forms consisting of XX(XX) pages are hereby accepted and incorporated herein by this reference and Notice to Proceed is hereby given after all Parties have signed this document.

1. **WORK.** Pursuant to the Master Services Agreement between the District and the Contractor dated Month DD, YYYY, and the Task Order Proposal dated Date of Quote, the Contractor has been awarded a Task Order for Project Title
2. **CONTRACT PRICE.** The price of this Task Order is Written Dollar Amount (\$Numerical Dollar Amount).
3. **PERFORMANCE DEADLINES.** The date for Substantial Completion of this Task Order is Date, and after Substantial Completion, the date for Final Acceptance is Date.
4. **LIQUIDATED DAMAGES.** Pursuant to Section 7 of the Master Services Agreement, the amount of liquidated damages shall be:\_\_\_\_\_.
5. **ADDITIONAL INSURED.** In addition to those entities identified in Section 23.d. of the Master Services Agreement, \_\_\_\_\_ shall be endorsed as "Additional Insured."
6. **PAYMENT PROCEDURES.** As set forth in the Master Services Agreement.
7. **EXECUTION.** Task Order Documents must be executed in digital format (DocuSign/Adobe Sign) within fifteen (15) calendar days of the date of this Notice of Award. Contractor shall attach Payment and Performance Bonds and Certificates of Insurance (COI) to the Task Order Documents in DocuSign/Adobe Sign.

Failure to comply with these conditions within the time specified will entitle the District to consider your Task Order Proposal abandoned and to annul this Task Order & Notice of Award.

**CONTRACTOR'S NOTICE OF AWARD REPRESENTATION & EXECUTION:**

Contractor agrees to perform the services identified above, in accordance with the terms and conditions contained in this Task Order, the Master Services Agreement, and the Notice of Award between the Parties.

**FORT COLLINS LOVELAND WATER DISTRICT**

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

Chris Pletcher, General Manager

Date: \_\_\_\_\_

**ATTEST:**

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

Finance Director (If over \$500k)

Date: \_\_\_\_\_

By execution of this Agreement, the undersigned each individually represents that he or she is duly authorized to execute and deliver this Agreement and that the subject Party shall be bound by the signatory's execution of this Agreement.

**“Contractor”**

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

First Last, Title

Date: \_\_\_\_\_

## **ATTACHMENT A-BID SCHEDULE**

Insert Task Order Quote/Proposal Here

**SECTION 00530  
TASK ORDER NOTICE TO PROCEED**

**NOTICE TO PROCEED DATE:** \_\_\_\_\_

**TASK ORDER TITLE:** \_\_\_\_\_

**TASK ORDER NUMBER:** \_\_\_\_\_

**TO:** \_\_\_\_\_

**Attn:** \_\_\_\_\_

This notice is to advise you:

That the Task Order and all amendments and supplements to the Task Order Documents covering the above described Work have been fully executed by the CONTRACTOR and the OWNER. That the required CONTRACTOR's Performance and Payment Bonds and insurance have been received by the OWNER. That the OWNER has approved the said Task Order and Task Order Documents.

Therefore, as the CONTRACTOR for the above-described Work, you are hereby authorized and directed to proceed within \_\_\_\_\_ (\_\_\_\_\_) calendar days from receipt of this notice as required by the Task Order and the AGREEMENT.

The dates for Substantial Completion and Final Acceptance shall be \_\_\_\_\_, and \_\_\_\_\_, respectively.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

THE FORT COLLINS-LOVELAND WATER DISTRICT

\_\_\_\_\_(OWNER)

By: Jason Martin, Construction Project Manager

**ACKNOWLEDGMENT OF NOTICE**

Receipt of the above Task Order Notice to Proceed is hereby acknowledged this day of Month, Year.

"Contractor"

\_\_\_\_\_(CONTRACTOR)

By: First Last, Title

**SECTION 00600  
BONDS AND CERTIFICATES**

- 00610    Performance Bond
- 00615    Payment Bond
- 00630    Attachment B-Certificate of Insurance
- 00635    Certificate of Substantial Completion
- 00640    Certificate of Final Acceptance
- 00650    Lien Waiver Release (CONTRACTOR)
- 00660    Consent of Surety
- 00670    Application for Exemption Certificate

**SECTION 00610  
PERFORMANCE BOND**

Bond No \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: that

(Firm)  
(Address)

(an Individual), (a Partnership), (a Corporation), hereinafter referred to as the "Principal" and

(Firm)  
(Address)

hereinafter referred to as "the Surety", are held and firmly bound unto THE FORT COLLINS-LOVELAND WATER DISTRICT, 5150 Snead Drive, Fort Collins, Colorado 80525 a (Quasi-Municipal Corporation and political subdivision of the State of Colorado) hereinafter referred to as the "OWNER", in the penal sum of \_\_(\$\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Master Agreement with the OWNER, dated the Day day of Month, Year, a copy of which is hereto attached and made a part hereof, for the performance of the District Task Order, titled Task Order Project Title, Task Order Number PM's Tracking #, dated Task Order Date, a copy of which is hereto attached and made a part hereof.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said Task Order and Master Agreement during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without Notice to the Surety and during the life of the guaranty period, and if the Principal shall satisfy all claims and demands incurred under such Task Order and Master Agreement, and shall fully indemnify and save harmless the OWNER from all cost and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Task Order and Master Agreement or to the Work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Task Order and Master Agreement or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PROVIDED, FURTHER, that the Surety Company must be authorized to transact business in the State of Colorado and be acceptable to the OWNER.



IN WITNESS WHEREOF, this instrument is executed in three (3) counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

IN PRESENCE OF:

\_\_\_\_\_

(Title)

(Corporate Seal)

**Principal**

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Address)

IN PRESENCE OF:

\_\_\_\_\_

\_\_\_\_\_

**Other Partners**

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

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

IN PRESENCE OF:

\_\_\_\_\_

\_\_\_\_\_

**Surety**

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

\_\_\_\_\_

(Address)

(Surety Seal)

**NOTE: Date of Bond must not be prior to date of Task Order. If CONTRACTOR is Partnership, all partners should execute Bond.**

**SECTION 00615  
PAYMENT BOND**

Bond No \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: that

(Firm)  
(Address)

(an Individual), (a Partnership), (a Corporation), hereinafter referred to as the "Principal" and

(Firm)  
(Address)

hereinafter referred to as "the Surety", are held and firmly bound unto THE FORT COLLINS-LOVELAND WATER DISTRICT, 5150 Snead Drive, Fort Collins, Colorado 80525 a (Quasi-Municipal Corporation and political subdivision of the State of Colorado) hereinafter referred to as the "OWNER", in the penal sum of \_\_(\$\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Master Agreement with the OWNER, dated the Day day of Month, Year, a copy of which is hereto attached and made a part hereof, for the performance of the District Task Order, titled Task Order Project Title, Task Order Number PM's Tracking #, dated Task Order Date, a copy of which is hereto attached and made a part hereof.

NOW, THEREFORE, if the Principal shall make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in such Task Order and Master Agreement and any authorized extension or modification thereof, including all amounts due for materials, lubricants, repairs on machinery, equipment and tools, consumed, rented or used in connection with the construction of such Work, and all insurance premiums on said Work, and for all labor, performed in such Work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Task Order and Master Agreement or to the Work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Task Order and Master Agreement or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PROVIDED, FURTHER, that the Surety Company must be authorized to transact business in the State of Colorado and be acceptable to the OWNER.

IN WITNESS WHEREOF, this instrument is executed in three (3) counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

IN PRESENCE OF:

**Principal**

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

(Title)

(Corporate Seal)

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

(Title)

\_\_\_\_\_  
(Address)

IN PRESENCE OF:

**Other Partners**

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

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

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

IN PRESENCE OF:

**Surety**

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

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

\_\_\_\_\_  
(Address)

(Surety Seal)

**NOTE: Date of Bond must not be prior to date of Task Order. If CONTRACTOR is Partnership, all partners should execute Bond.**

**SECTION 00630**  
**ATTACHMENT B - CERTIFICATE OF INSURANCE**

CONTRACTOR shall submit Certificate of Insurance in compliance with the Task Order Documents.

**SECTION 00635**  
**CERTIFICATE OF SUBSTANTIAL COMPLETION**

TO: FORT COLLINS-LOVELAND WATER DISTRICT (OWNER)      PROJECT TITLE: \_\_\_\_\_

DATE OF SUBSTANTIAL COMPLETION: \_\_\_\_\_      LOCATION: Fort Collins, Colorado

\_\_\_\_\_      OWNER: Fort Collins-Loveland Water District

PROJECT OR SPECIFIED PART SHALL      CONTRACTOR: \_\_\_\_\_

INCLUDE: \_\_\_\_\_      TASK ORDER DATE: \_\_\_\_\_

The Work performed under this Task Order, pursuant to the Task Order Documents, has been inspected by authorized representatives of the OWNER, CONTRACTOR, and the ENGINEER and the project (or specified part of the project, as indicated above) is hereby declared to be substantially completed on the above date.

A tentative list of items to be completed or corrected is appended hereto. This list may not be exhaustive, and the failure to include an item on it does not alter the responsibility of the CONTRACTOR to complete all the Work in accordance with the Task Order Documents.

\_\_\_\_\_  
PROJECT MANAGER      By: \_\_\_\_\_  
   AUTHORIZED REPRESENTATIVE      DATE

The CONTRACTOR accepts the above Certificate of Substantial Completion and agrees to complete and correct the items on the tentative list within the time indicated.

\_\_\_\_\_  
CONTRACTOR      By: \_\_\_\_\_  
   AUTHORIZED REPRESENTATIVE      DATE

The OWNER accepts the project or specified area of the project as substantially complete and will assume full possession of the project or specified area of the project at 12:01 a.m., on \_\_\_\_\_. The responsibility for heat, utilities, security, and insurance under the Task Order Documents shall be as set forth under "Remarks" below.

FORT COLLINS LOVELAND WATER DISTRICT      By: \_\_\_\_\_  
OWNER      AUTHORIZED REPRESENTATIVE      DATE

REMARKS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SECTION 00640**  
**CERTIFICATE OF FINAL ACCEPTANCE**

**DATE:** \_\_\_\_\_

**TO:** \_\_\_\_\_

You are hereby notified that on the Day of Month, Year, the FORT COLLINS-LOVELAND WATER DISTRICT, 5150 Snead Drive, Fort Collins, Colorado 80525, has accepted the Work completed by "Name", CONTRACTOR , for THE FORT COLLINS-LOVELAND WATER DISTRICT Task Order, titled Project Title, Task Order Number PM's Tracking #.

Your continuing obligations and guarantees for the Project will be as provided in the Task Order and Task Order Documents.

Sincerely,

THE FORT COLLINS-LOVELAND WATER DISTRICT (OWNER)

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

Jason Martin, Construction Project Manager

**SECTION 00650**  
**LIEN WAIVER RELEASE**  
**"CONTRACTOR NAME"**

**TO:** FORT COLLINS LOVELAND WATER DISTRICT (OWNER)

**FROM:** Name (CONTRACTOR)

**TASK ORDER TITLE:** \_\_\_\_\_

**TASK ORDER NUMBER:** \_\_\_\_\_

1. The CONTRACTOR acknowledges having received payment, except retainage from the OWNER for all work, labor, skill and material furnished, delivered and performed by the CONTRACTOR for the OWNER or for anyone in the construction, design, improvement, alteration, addition or repair of the above-described project.
2. In consideration of such payment and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CONTRACTOR voluntarily waives all rights, claims and liens, including but not limited to, mechanic's liens, Miller Act claims (40 U.S.C.A. 270 a and b), stop notices, equitable liens and labor and material bond rights which the CONTRACTOR may now or may afterward have, claim or assert for all and any work, labor, skill or materials furnished, delivered or performed for the construction, design, improvement, alteration, addition or repair of the above described project, against the OWNER or its officers, agents, employees or assigns, against any fund of or in the possession or control of the OWNER, against the project or against all land and the buildings on and appurtenances to the land improved by the project. This waiver does not apply to unpaid retainage.
3. The CONTRACTOR affirms that all work, labor and materials, furnished, delivered or performed to or for the construction, design, improvement, alteration, addition or repair of the project were furnished, delivered or performed by the CONTRACTOR or its agents, employees, and servants, or by and through the CONTRACTOR by various Subcontractors or materialmen or their agents, employees and servants and further affirms the same have been paid in full (excepting only retainage) and have released in full any and all existing or possible future mechanic's liens or rights or claims against the project or any funds in the OWNER'S possession or control concerning the project or against the OWNER or its officers, agents, employees or assigns arising out of the project (excepting only retainage).
4. The CONTRACTOR agrees to defend and hold harmless the OWNER, the lender, if any, and the Surety on the project against and from any claim hereinafter made by the CONTRACTOR's Subcontractors, materialmen, employees, servants, agents or assigns against the project or against the OWNER or its officers, employees, agents or assigns arising out of the project for all loss, damage and costs, including reasonable attorney's fees, incurred as a result of such claims.
5. The parties acknowledge that the description of the project set forth above constitutes an adequate description of the property and improvements to which this Lien Waiver Release pertains. It is further acknowledged that this Lien Waiver Release is for the benefit of and may be relied upon by the OWNER, the lender, if any, and Surety on any labor and material bonds for the project.

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

CONTRACTOR: **Name**

By: \_\_\_\_\_  
Frist Last, Title

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF COLORADO       )  
                                      )ss.  
COUNTY OF LARIMER       )

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

\_\_\_\_\_.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_.

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



**SECTION 00660  
CONSENT OF SURETY**

**TO:** THE FORT COLLINS-LOVELAND WATER DISTRICT-Fort Collins, Colorado (hereinafter referred to as the "OWNER")

**CONTRACTOR:** Name \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TASK ORDER NUMBER:** \_\_\_\_\_

**TASK ORDER DATE:** \_\_\_\_\_

In accordance with the provisions of the Task Order and Master Agreement between the OWNER and the CONTRACTOR as indicated above, for the Task Order titled Task Order Project Title on bond of \_\_\_\_\_, \_\_\_\_\_ (Surety) \_\_\_\_\_ hereby approves of the Final Payment to the CONTRACTOR and agrees that Final Payment to the CONTRACTOR shall not relieve the Surety Company of any of its obligations to the OWNER, as set forth in the said Surety Company's Bond.

IN WITNESS WHEREOF, the Surety Company has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

By: \_\_\_\_\_ (Name) Attorney-in-Fact

**ATTACH:** Power of Attorney and Certificate of Authority of Attorney(s)-in-Fact.

**SECTION 00670**  
**APPLICATION FOR EXEMPTION CERTIFICATE**



DR 0172 (06/03/22)  
COLORADO DEPARTMENT OF REVENUE  
Denver CO 80261 - 0009  
Tax.Colorado.gov  
Page 1 of 1

## Contractor Application for Exemption Certificate

This exemption does not include or apply to the purchase or rental of equipment, supplies, and materials which are purchased, rented, or consumed by the contractor and which do not become a part of the structure, highway, road, street, or other public works **owned and used** by the exempt organization.

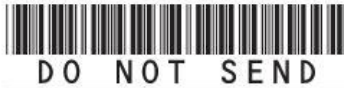
Any unauthorized use of the exemption certificate will result in revocation of your exemption certificate and other penalties provided by law.

A separate certificate is required for each project.

**Fax completed forms and contracts to 303-205-2376 or mail to:** Colorado Department of Revenue, Denver, CO 80261-0009

**Failure to accurately complete all boxes of the form or provide all supporting documentation will cause the application to be denied.**

Must be completed by applicant				
<b>Contractor Information</b>				
Trade name/DBA				
Owner, partner or corporate last name		First Name		Middle Initial
Mailing Address	City	State	ZIP	
E-Mail Address	FEIN	Bid amount for your contract (Must match to the penny) \$		
Fax number	Business Phone number			
Colorado withholding tax account number				
If your company does not have a Colorado withholding tax account number check the option below that applies (See instructions)				
<input type="checkbox"/> Subsidiary	<input type="checkbox"/> Subcontractors	<input type="checkbox"/> Staffing Agency	<input type="checkbox"/> No employees/subcontractors (see below)	
No Employees/Subcontractors. (Provide explanation or attach a letter of explanation).				
<b>Exemption Information</b>				
<b>**Attachment Required**</b> Copies of contract or agreement page, identifying the contracting parties, bid amount, type of work, and signatures of contracting parties <b>must</b> be attached				
Name of exempt organization (as show on contract)		Exempt organization's number (See instructions) <b>98</b>		
Address of exempt organization	City	State	ZIP	
Principal contact at exempt organization-Last Name		First Name		Middle Initial
Housing Authority (if applicable)		Name of Project (if applicable)		
Owner of the Project (if applicable)				
Physical location of project site (give actual address when applicable and Cities and/or County(ies) where project is located)				
City	State	ZIP	Principal contact's telephone number	
Scheduled construction start date (MM/DD/YY)		Estimated completion date (MM/DD/YY) (See instructions)		
I declare under penalty of perjury in the second degree that the statements made in this application are true and complete to the best of my knowledge.				
Signature of the business owner, partner or corporate officer		Title of corporate officer		Date (MM/DD/YY)



## Special Notice

### Purpose of this application

The exemption certificate for which you are applying must be used only for the purpose of purchasing construction and building materials for the exempt project described below. This exemption does not include or apply to the purchase or rental of equipment, supplies, and materials which are purchased, rented, or consumed by the contractor and which do not become a part of the structure, highway, road, street, or other public works owned and used by the exempt organization.

Any unauthorized use of the exemption certificate will result in revocation of your exemption certificate and other penalties provided by law.

A separate certificate is required for each project.

### Subcontractors:

Subcontractors will not be issued Certificates of Exemption by the Department of Revenue. Upon receipt of the Certificate, the prime contractor should make a copy for each subcontractor involved in the project and complete it by filling in the subcontractor's name and address and signing it. The original Certificate should always be retained by the prime contractor. Copies of all Certificates that the prime contractor issued to subcontractors should be kept at the prime contractor's place of business for a minimum of three years and be available for inspection in the event of an audit.

### Application Requirements (Checklist)

#### Prevent your application from being returned.

- ☐ Read the Special Notice
- ☐ Complete an application for each project.
- ☐ Accurately complete all applicable fields. (Read Instructions)
- ☐ Attach a copy of the contract or agreement page, identifying the contracting parties, bid amount, type of work performed. This must include the signature of the Exempt Organization.
- ☐ Bid amount on Contract or Agreement page matches the amount listed on the application (to the penny)
- ☐ The exempt organization's 98 number was provided and is correct.
- ☐ Ensure the completion dates listed on the application can be validated by your contract, award letter, agreement or purchase order.
- ☐ Sign the DR 0172 (Contractor Application for Exemption Certificate).

See FYI Sales 95 for information about qualifying affordable housing projects.

## **SECTION 00900**

### **ADDENDA, MODIFICATIONS AND PAYMENT**

00950      Change Order

00960      Application for Payment

Attachment C Drawing Index

**SECTION 00950**  
**CHANGE ORDER NO. \_\_\_\_**

PROJECT TITLE:

CONTRACTOR:

TASK ORDER NUMBER:

DESCRIPTION:

1. Reason for Change: Why is the change required?
2. Description of Change: Provide description of the changes to the Work
3. Change in Task Order Price:
4. Change in Task Order Time:

---

ORIGINAL TASK ORDER PRICE	\$	.00
TOTAL APPROVED CHANGE ORDER		.00
TOTAL PENDING CHANGE ORDER		.00
TOTAL THIS CHANGE ORDER		.00
TOTAL % OF THIS CHANGE ORDER		%
TOTAL C.O.% OF ORIGINAL TASK ORDER		%
<b>ADJUSTED TASK ORDER COST</b>	<b>\$</b>	<b>.00</b>

CONTRACTOR: "NAME"

By: \_\_\_\_\_  
Frist Last, Title

Date: \_\_\_\_\_

ACCEPTED: \_\_\_\_\_  
Jason Martin, Construction Project Manager

Date: \_\_\_\_\_

**SECTION 00960**  
**APPLICATION FOR PAYMENT TEMPLATE**  
**APPLICATION FOR PAYMENT**

Page 1 of 2

PROJECT \_\_\_\_\_

OWNER: \_\_\_\_\_

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

ENGINEER: \_\_\_\_\_

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

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

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

APPLICATION NUMBER \_\_\_\_\_

APPLICATION DATE \_\_\_\_\_

PERIOD BEGINNING \_\_\_\_\_

PERIOD ENDING \_\_\_\_\_

PROJECT NUMBER \_\_\_\_\_

INVOICE NUMBER \_\_\_\_\_

CHANGE ORDERS			PAY APPLICATION		RETAINAGE	
<b>SCOPE OF WORK CHANGE ORDERS</b>			Application is made for Payment as shown below in connection with the Contract. The present status of the account for this Contract is as follows:  <div style="display: flex; justify-content: space-between;"> <span></span> <span>\$ -</span> </div> <div style="display: flex; justify-content: space-between;"> <span>- Original Contract Amount</span> <span>\$ -</span> </div> <div style="display: flex; justify-content: space-between;"> <span>- Net Change by Change Order</span> <span>\$ -</span> </div> <div style="display: flex; justify-content: space-between;"> <span>- Revised Current Contract Amount</span> <span>\$ -</span> </div> <div style="display: flex; justify-content: space-between;"> <span>-</span> <span>\$ -</span> </div> <div style="display: flex; justify-content: space-between;"> <span>- Total Work Completed to Date:</span> <span>\$ -</span> </div> <div style="display: flex; justify-content: space-between;"> <span>- Total Change Order Work to Date:</span> <span>\$ -</span> </div> <div style="display: flex; justify-content: space-between;"> <span>-</span> <span>\$ -</span> </div>			

The undersigned CONTRACTOR certifies that all obligations of CONTRACTOR incurred in connection with the WORK have been satisfied as required in paragraph 14.3 of the General Conditions of the Contract.

The above Amount Due this Application is requested by the CONTRACTOR's Project Manager.

BY: \_\_\_\_\_ Date \_\_\_\_\_

NAME & TITLE: \_\_\_\_\_

Payment of the above Amount Due This Application has been reviewed by the OWNER'S Project Manager

BY: \_\_\_\_\_ Date \_\_\_\_\_

NAME & TITLE: \_\_\_\_\_

Payment of the above Amount Due This Application is approved by the OWNER.

BY: \_\_\_\_\_ Date \_\_\_\_\_

NAME & TITLE: \_\_\_\_\_



Item #	Description	Quantity	UOM	Contract Summary		This Period		Previous		Total to Date		Cost Remaining	Percent Complete
				Unit Price	Total	Quantity	Total	Quantity	Total	Quantity	Total		
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
11													
12													
13													
14													
15													
16													
17													
18													
19													
20													
21													
22													
23													
24													

Total Contract Amount Total	\$ -												
Total This Period						\$ -							
Previous Billings								\$ -					
Total Completed to Date										\$ -			
Balance Remaining											\$ -		
Percent Complete												\$ -	

CONTRACT SUMMARY	
Original Contract Amount	\$ -
Change Orders to Date (see attached)	\$ -
Adjusted Contract Amount	\$ -
Total Completed to Date	\$ -
Total Materials Remaining @ Site	\$ -
Total Change Order Work to Date (see attached)	\$ -
Value of Work in Place	\$ -
Percent Complete Including Stored Materials	\$ -
Less Retention @ 10% up to 50% complete, 5% beyond 50% of Adjusted Contract	\$ -
Total to Date Less Retention	\$ -
Less Previous Billings	\$ -
Total Due	\$ -



**ATTACHMENT C DRAWING INDEX**

TASK ORDER #

TASK ORDER TITLE

BY: Company Name who last revised the drawings

Sheet Date

Title

Drawing Revision



**EXHIBIT C**  
**SECTION 00700**  
**GENERAL CONDITIONS**

## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



Endorsed by



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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 Defined Terms

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

regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

11. **Constituent of Concern**—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. **Contract**—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. **Contract Documents**—Those items so designated in the Agreement, and which together comprise the Contract.
14. **Contract Price**—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
15. **Contract Times**—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. **Contractor**—The individual or entity with which Owner has contracted for performance of the Work.
17. **Cost of the Work**—See Paragraph 13.01 for definition.
18. **Drawings**—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. **Effective Date of the Contract**—The date, indicated in the Agreement, on which the Contract becomes effective.
20. **Engineer**—The individual or entity named as such in the Agreement.
21. **Field Order**—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. **Hazardous Environmental Condition**—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. **Laws and Regulations; Laws or Regulations**—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. **Liens**—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

38. **Specifications**—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. **Subcontractor**—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. **Substantial Completion**—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
41. **Successful Bidder**—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. **Supplementary Conditions**—The part of the Contract that amends or supplements these General Conditions.
43. **Supplier**—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. **Technical Data**—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. **Underground Facilities**—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. **Unit Price Work**—Work to be paid for on the basis of unit prices.
47. **Work**—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
48. **Work Change Directive**—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

25. **Milestone**—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. **Notice of Award**—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. **Notice to Proceed**—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. **Owner**—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. **Progress Schedule**—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
30. **Project**—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. **Project Manual**—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. **Resident Project Representative**—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. **Samples**—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. **Schedule of Submittals**—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. **Schedule of Values**—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
36. **Shop Drawings**—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
37. **Site**—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

## 1.02 Terminology

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

“furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

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

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 Delivery of Bonds and Evidence of Insurance

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

### 2.02 Copies of Documents

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

### 2.03 Before Starting Construction

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
- 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;
  - a preliminary Schedule of Submittals; and
  - 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.

## ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

### 3.02 Reference Standards

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

### 3.03 Reporting and Resolving Discrepancies

- A. *Reporting Discrepancies:*
- Contractor’s Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

### 2.04 Preconstruction Conference; Designation of Authorized Representatives

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

### 2.05 Initial Acceptance of Schedules

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
- 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.
  - Contractor’s Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  - Contractor’s Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

### 2.06 Electronic Transmittals

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

- Contractor’s Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
  - 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:*
- Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
    - the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
    - the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 Requirements of the Contract Documents

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer’s written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 Reuse of Documents

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

## ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

### 4.01 Commencement of Contract Times; Notice to Proceed

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

### 4.02 Starting the Work

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

### 4.03 Reference Points

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

### 4.04 Progress Schedule

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
- Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

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

### 5.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### 5.02 Use of Site and Other Areas

- A. *Limitation on Use of Site and Other Areas:*
- Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  - If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste

- Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.

- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

### 4.05 Delays in Contractor's Progress

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
- severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - abnormal weather conditions;
  - acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
  - acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 Subsurface and Physical Conditions

- A. *Reports and Drawings:* The Supplementary Conditions identify:
- those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
  - those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
  - Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
- 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
  - other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  - any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

### 5.04 Differing Subsurface or Physical Conditions

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
- is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
  - is of such a nature as to require a change in the Drawings or Specifications; or
  - differs materially from that shown or indicated in the Contract Documents; or

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

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

B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Possible Price and Times Adjustments:*

- Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
  - with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
  - 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.
- Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
  - Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
  - the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site

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

D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Possible Price and Times Adjustments:*

- Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
  - With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
  - Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
  - Contractor gave the notice required in Paragraph 5.05.B.
- If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
- Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

#### 5.06 Hazardous Environmental Conditions at Site

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

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

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer,

and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

#### 5.05 Underground Facilities

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

- Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
- the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
  - reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  - locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
  - coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  - the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and

or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

- 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
- other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
- any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.

H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

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

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

## ARTICLE 6 – BONDS AND INSURANCE

### 6.01 Performance, Payment, and Other Bonds

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond

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to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.

- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

### 6.03 Contractor's Insurance

- A. **Workers' Compensation:** Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
  1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
  4. Foreign voluntary worker compensation (if applicable).
- B. **Commercial General Liability—Claims Covered:** Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
  1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
  2. claims for damages insured by reasonably available personal injury liability coverage.
  3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. **Commercial General Liability—Form and Content:** Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
  1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.

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signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

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

### 6.02 Insurance—General Provisions

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor

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- b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
3. Broad form property damage coverage.
4. Severability of interest.
5. Underground, explosion, and collapse coverage.
6. Personal injury coverage.
7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. **Automobile liability:** Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. **Umbrella or excess liability:** Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. **Contractor's pollution liability insurance:** Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- G. **Additional insureds:** The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. **Contractor's professional liability insurance:** If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial

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Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.

I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:

1. include at least the specific coverages provided in this Article.
  2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
  3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
  4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
  5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."

Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.

- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by,

2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
  3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
  4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
  5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
  6. extend to cover damage or loss to insured property while in transit.
  7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
  8. allow for the waiver of the insurer's subrogation rights, as set forth below.
  9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
  10. not include a co-insurance clause.
  11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
  12. include performance/hot testing and start-up.
  13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this

arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage, or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

#### 7.02 Labor; Working Hours

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

#### 7.03 Services, Materials, and Equipment

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

#### 7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
- a. shall certify that the proposed substitute item will:
- 1) perform adequately the functions and achieve the results called for by the general design,
- 2) be similar in substance to that specified, and
- 3) be suited to the same use as that specified.
- b. will state:
- 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
- 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
- 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
- c. will identify:
- 1) all variations of the proposed substitute item from that specified, and
- 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the

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

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

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

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

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

- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.

- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

#### 7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.

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

- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

#### 7.06 Concerning Subcontractors, Suppliers, and Others

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

- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
  2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

#### 7.07 Patent Fees and Royalties

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

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any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.11 Record Documents

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

#### 7.12 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
1. all persons on the Site or who may be affected by the Work;
  2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly

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performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 7.08 Permits

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

#### 7.09 Taxes

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

#### 7.10 Laws and Regulations

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

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or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

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

#### 7.13 Safety Representative

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

#### 7.14 Hazard Communication Programs

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

#### 7.15 Emergencies

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

#### 7.16 Shop Drawings, Samples, and Other Submittals

##### A. Shop Drawing and Sample Submittal Requirements:

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

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

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1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal;
  6. the issuance of a notice of acceptability by Engineer;
  7. any inspection, test, or approval by others; or
  8. any correction of defective Work by Owner.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 Indemnification

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

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Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.

5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
  6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
  7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
  8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.
- E. **Resubmittal Procedures:**
1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
  2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawing, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
  3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

#### 7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

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#### 7.19 Delegation of Professional Design Services

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

### ARTICLE 8 – OTHER WORK AT THE SITE

#### 8.01 Other Work

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

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alter others' work with the written consent of Engineer and the others whose work will be affected.

- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

#### 8.02 Coordination

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

#### 8.03 Legal Relationships

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner for whom the Owner is responsible causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual

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rights against Contractor with respect to the breach of the obligations set forth in this paragraph.

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

### ARTICLE 9 – OWNER'S RESPONSIBILITIES

#### 9.01 Communications to Contractor

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

#### 9.02 Replacement of Engineer

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

#### 9.03 Furnish Data

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

#### 9.04 Pay When Due

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

#### 9.05 Lands and Easements; Reports, Tests, and Drawings

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

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#### 9.06 Insurance

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

#### 9.07 Change Orders

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

#### 9.08 Inspections, Tests, and Approvals

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

#### 9.09 Limitations on Owner's Responsibilities

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

#### 9.10 Undisclosed Hazardous Environmental Condition

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

#### 9.11 Evidence of Financial Arrangements

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

#### 9.12 Safety Programs

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

### ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

#### 10.01 Owner's Representative

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

#### 10.02 Visits to Site

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

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the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

#### 10.03 Project Representative

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

#### 10.04 Rejecting Defective Work

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

#### 10.05 Shop Drawings, Change Orders and Payments

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

#### 10.06 Determinations for Unit Price Work

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

#### 10.07 Decisions on Requirements of Contract Documents and Acceptability of Work

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

#### 10.08 Limitations on Engineer's Authority and Responsibilities

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in

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contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

#### 10.09 Compliance with Safety Program

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

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

#### 11.01 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
  - 1. *Change Orders:*
    - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
    - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
  - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents

- 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
  - 1. a mutually acceptable fixed fee; or
  - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.04.C.2.a and 11.04.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
    - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
    - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

#### 11.05 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

#### 11.06 Change Proposals

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

governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

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

#### 11.02 Owner-Authorized Changes in the Work

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

#### 11.03 Unauthorized Changes in the Work

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

#### 11.04 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  - 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
  - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or

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

- 1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
- 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
- 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

#### 11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  - 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
  - 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

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

#### 11.08 Notification to Surety

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

### ARTICLE 12 – CLAIMS

#### 12.01 Claims

- A. **Claims Process:** The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. **Submittal of Claim:** The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. **Review and Resolution:** The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. **Mediation:**
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
  2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal

and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

- E. **Partial Approval:** If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. **Denial of Claim:** If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. **Final and Binding Results:** If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

### ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

#### 13.01 Cost of the Work

- A. **Purposes for Determination of Cost of the Work:** The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. **Costs Included:** Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site.
  - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. **Costs Excluded:** The term Cost of the Work shall not include any of the following items:
1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
  2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. **Contractor's Fee:** When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.
- E. **Documentation:** Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

#### 13.02 Allowances

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

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

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

- B. *Cash Allowances*: Contractor agrees that:
- 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
  - Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
- 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;
  - there is no corresponding adjustment with respect to any other item of Work; and
  - Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 Defective Work

- A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects*: Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 Acceptance of Defective Work

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

#### 14.05 Uncovering Work

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

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

#### 14.01 Access to Work

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

#### 14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
- by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  - to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  - by manufacturers of equipment furnished under the Contract Documents;
  - for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
- Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.
- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

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

#### 14.06 Owner May Stop the Work

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

#### 14.07 Owner May Correct Defective Work

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



- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

##### 15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
- At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
  - 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.
  - The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
- Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
  - 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:
    - the Work has progressed to the point indicated;
    - 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

##### D. *Payment Becomes Due:*

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

##### E. *Reductions in Payment by Owner:*

- In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
  - Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - Contractor has failed to provide and maintain required bonds or insurance;
  - Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - the Work is defective, requiring correction or replacement;
  - Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - the Contract Price has been reduced by Change Orders;
  - an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
  - liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - 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;
  - there are other items entitling Owner to a set off against the amount recommended.
- If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and

- 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.
- By recommending any such payment Engineer will not thereby be deemed to have represented that:
    - inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
    - 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.
  - 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:
    - to supervise, direct, or control the Work, or
    - for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
    - for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
    - to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
    - to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
  - Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
  - Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
    - the Work is defective, requiring correction or replacement;
    - the Contract Price has been reduced by Change Orders;
    - Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
    - Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
    - Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

- Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

##### 15.02 Contractor's Warranty of Title

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

##### 15.03 Substantial Completion

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

- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

**15.04 Partial Use or Occupancy**

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
  2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

**15.05 Final Inspection**

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

**15.06 Final Payment**

- A. **Application for Payment:**
1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

**15.07 Waiver of Claims**

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

**15.08 Correction Period**

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. correct the defective repairs to the Site or such other adjacent areas;
  2. correct such defective Work;
  3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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

- a. all documentation called for in the Contract Documents;
- b. consent of the surety, if any, to final payment;
- c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
- d. a list of all disputes that Contractor believes are unsettled; and
- e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. **Completion of Work:** The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. **Payment Becomes Due:** Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

**ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

**16.01 Owner May Suspend Work**

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

**16.02 Owner May Terminate for Cause**

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

exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

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

#### 16.03 Owner May Terminate For Convenience

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

#### 16.04 Contractor May Stop Work or Terminate

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

### ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

#### 17.01 Methods and Procedures

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

### ARTICLE 18 – MISCELLANEOUS

#### 18.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
  - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
  - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

#### 18.02 Computation of Times

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

#### 18.03 Cumulative Remedies

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

#### 18.04 Limitation of Damages

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

#### 18.05 No Waiver

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

#### 18.06 Survival of Obligations

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

#### 18.07 Controlling Law

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

#### 18.08 Headings

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

**EXHIBIT D  
SECTION 00800  
SUPPLEMENTARY CONDITIONS**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC C-700 (2013 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

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

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

**All Articles Within - The following changes to the General Conditions and Supplementary Conditions apply to all sections.**

**Replace all instances where "Engineer" is used as the entity/decision maker for the project with:**

...Design Team...

**Article 1 – Definitions and Terminology**

SC-1.01      *Defined Terms*

**Add to the list of definitions in Paragraph 1.01.A by inserting the following as numbered items in their proper alphabetical positions:**

*Final Completion* – Owner's acceptance of the Work upon confirmation from Engineer and Contractor that the Work is totally complete in accordance with Contract Documents.

**Add the following language at the end of Paragraph 1.01.A.34, *Schedule of Submittals*:**

...and is to be coordinated with the schedule provisions included in the General Requirements, if applicable.

**Add the following language at the end of Paragraph 1.01.A.35, *Schedule of Values*:**

...and is to be coordinated with the schedule provisions included in the General Requirements, if applicable.

SC-1.02      *Terminology*

**Add the following language at the end of Paragraph 1.02.C:**

...unless otherwise noted.

**Article 2 – Preliminary Matters**

SC-2.04      *Preconstruction Conference; Designation of Authorized Representatives*

**Amend the first sentence of Paragraph 2.04.A to read as follows:**

Unless otherwise specified in the General Requirements, before any Work...

SC-2.05      *Initial Acceptance of Schedules*

**Amend the first sentence of Paragraph 2.05.A to read as follows:**

Unless otherwise specified in the General Requirements, at least 10 days before...

**Article 3 – Documents: Intent, Requirements, Reuse**

SC-3.03        *Reporting and Resolving Discrepancies*

**Add the following new paragraph after Paragraph 3.03.B.1:**

2. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:
  - a. Agreement,
  - b. Addenda, with those of later date having preference over those of earlier date,
  - c. Supplementary Conditions,
  - d. Standard General Conditions of the Construction Contract,
  - e. Drawings and Specifications. In the case of an inconsistency between Drawings and Specifications or within either Document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with Engineer's interpretation.

**Article 6 - Bonds and Insurance**

SC-6.01        *Performance, Payment and Other Bonds*

Performance, Payment, and Other Bonds shall be pursuant to Section 15 of the Agreement.

SC-6.03        *Contractor's Insurance*

Contractor's Insurance shall be pursuant to Section 14 of the Agreement.

**Article 7 - Contractor's Responsibilities**

SC-7.06        *Concerning Subcontractors, Suppliers and Others*

**Add the following language at the end of Paragraph 7.06.M:**

, including but not limited to bonding, insurance, warranties, indemnities, progress payments and completion of performance requirements.

**Add the following language at the beginning of Paragraph 7.06.N:**

Upon receipt of progress and final payments from Owner, Contractor shall disburse the same immediately to subcontractors without any requirement of Owner to supervise the same.

SC-7.09        *Taxes*

**Add the following new paragraph immediately after Paragraph 7.09.A:**

- B. Owner is exempt from payment of sales and compensating use taxes of the State of Colorado and of municipalities and counties thereof on all materials to be incorporated into the Work.
  1. Owner will, upon request, furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.

2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

3. Owner will not reimburse Contractor for any sales or use taxes paid to the State or any county or municipality from which Owner or the Project are exempt.

SC-7.12 Safety and Protection

**Add the following new paragraph immediately after Paragraph 7.12.G:**

H. As provided in SC-14.06, Owner may stop the Work immediately if Owner observes a substantial violation of Paragraph 7.12.

SC-7.16 Shop Drawings, Samples and Other Submittals

**Amend the first sentence of Paragraph 7.16.D.1 to read as follows:**

Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to the Owner & Engineer and shall be coordinated with the schedule provisions included in the General Requirements, if applicable.

SC-7.17 Contractor's General Warranty and Guarantee

Contractor's General Warranty and Guarantee shall be pursuant to Section 16 of the Agreement.

SC-7.18 Indemnification

Indemnification shall be pursuant to Section 13 of the Agreement.

**Article 11 – Amending the Contract Documents; Changes in the Work**

SC-11.04 Change of Contract Price

**Add the following language at the end of Paragraph 11.04.B.3:**

Contractor shall submit on a daily basis, or at an interval determined by Owner, the actual costs for all labor, materials, equipment, and incidentals utilized in the performance of the change for Owner's review. The format of the submittal shall be as determined by the Owner.

**Delete Paragraph 11.04.C.2.a in its entirety and insert the following in its place:**

for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be pursuant to the agreed markup listed under Exhibit F.

**Delete Amend Paragraph 11.04.C.2.b in its entirety and insert the following in its place:**

for costs incurred under Paragraphs 13.01.B.3, the Contractor's fee shall be pursuant to the agreed markup listed under Exhibit F.

**Delete Paragraph C.2.c in its entirety and insert the following in its place:**

where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.04.C.2.a and 11.04.C.2.b is that the Contractor's fee shall be based on: (1) the agreed markup fee (listed under Exhibit

E) of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, the agreed markup fee (listed under Exhibit F) of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;

**Add the following new paragraph immediately after Paragraph 11.04.C:**

D. This Paragraph 11.04 is subject to the change order requirements set forth in SC-11.07.

SC-11.07      Execution of Change Orders

**Add the following new paragraphs immediately after Paragraph 11.07.A.4:**

5. A fully executed Change Order represents full and final settlement for all costs (including all impact costs) and time relating to the work included in the change order. The following language shall be typed on the face of each Change Order:

THIS CHANGE ORDER CONSTITUTES FULL AND FINAL SETTLEMENT FOR ALL COSTS AND TIME ASSOCIATED WITH THE WORK DESCRIBED HEREIN. COSTS ARE DEFINED TO INCLUDE ALL DIRECT AND INDIRECT LABOR COSTS RELATED TO, AND/OR OCCASIONED BY THE WORK DESCRIBED HEREIN; ALL MATERIAL AND EQUIPMENT COSTS RELATED HERETO; ANY AND ALL IMPACT COSTS RELATED TO AND/OR OCCASIONED BY THE PERFORMANCE OF THIS WORK; AS WELL AS ALL APPLICABLE TAXES, INSURANCE, BONDS, AND PROFIT. ALL OTHER TERMS AND CONDITIONS OF THIS CONTRACT REMAIN IN FULL FORCE AND EFFECT.

6. The Contract Documents are subject to Section 24-91-103.6, C.R.S., and in accordance therewith:

a. Owner shall not issue any Change Order or other directive (other than a clarification) requiring additional compensable Work to be performed that will cause the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Contract Price and any subsequent appropriations, unless:

1. Contractor is given written assurance by Owner that lawful appropriations to cover the costs of the additional Work have been made and are available prior to performance of the additional Work; or

2. The additional Work is covered by the following remedy-granting provision: Contractor may request, in writing, a letter from Owner explaining the expected sources of funding for the additional Work. In the event Owner does not provide such written assurance reasonably satisfactory to Contractor within five (5) days of Contractor's request, Contractor may stop Work until such time as Owner provides satisfactory assurances. Contractor's acceptance of a Change Order in accordance with any assurances provided under this Paragraph shall not limit or restrict Contractor from making a Claim under the Contract Documents for an adjustment in the Contract Price or Contract Times or otherwise for expenses or damages directly attributable to Contractor's stoppage of the Work as permitted hereunder.

b. For any Change Order or other directive (other than a clarification) that requires additional compensable Work to be performed, Owner shall reimburse Contractor for Contractor's costs on the periodic basis set forth in the Contract Documents for all additional directed Work performed until the Change Order is finalized. In no instance shall the periodic reimbursement be required before Contractor has submitted an estimate of cost to Owner for the additional compensable Work to be performed.

## **Article 12 – Claims**

### SC-12.01      *Claims*

**Amend the first sentence of Paragraph 12.01.B. to read as follows:**

The party submitting a claim shall deliver it directly to the other party to the Contract promptly (but in no event later than seven (7) days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within seven (7) days of the decision under appeal.

**Add the following new paragraph immediately after Paragraph 12.01.B:**

Owner shall give notice to the Surety of any Claim that Owner might assert against Contractor on the performance bond or the payment bond, unless waived in writing by the Surety. Owner's act of giving such notice or failure to give such notice shall not affect Owner's right to seek or pursue any remedy provided for in such bonds or under any other provisions of the Contract Documents. This provision does not modify Contractor's obligations to provide notification to the Surety under the General Conditions.

**Add the following new paragraphs immediately after Paragraph 12.01.G:**

H. *Referral of Claims to Design Professional:* No claim or defense of Owner shall be barred for failure to refer an item of dispute to Engineer. Owner and Contractor agree that any requirement in the Contract Documents to refer a claim to Engineer or any other party as a condition precedent to exercising any lawful remedies shall not be a bar to bringing an action in a court of competent jurisdiction if Owner or Contractor has a reasonable belief that complying with such referral requirement might jeopardize its ability to exercise such remedies due to the running of the applicable statute of limitations or the application of an equitable defense such as waiver, estoppel or laches. Promptly following the filing of an action under such circumstances, Owner and Contractor shall then proceed to comply with such claim referral process to the extent not stayed by a court of competent jurisdiction.

I. *Two-Year Statute of Limitations:* Any claim or action at law or in equity upon or arising out of the Contract Documents or the Work performed thereunder (except for a state action based in tort, which shall be subject to the Colorado Governmental Immunity Act, § 24-10-101 *et seq.*, C.R.S.) which is asserted by Contractor against Owner shall be commenced within two (2) years from the date when such claim or action accrued pursuant to Section 13-80-102(1)(h), C.R.S., or such claim or action shall thereafter be barred.

## **Article 13 – Cost of the Work; Allowances; Unit Price Work**

### SC-13.01      *Cost of the Work*

**Delete Paragraph 13.01.B.4 in its entirety.**

**Add the following new paragraph immediately after Paragraph 13.01.C.5:**



6. The cost of special consultants (including engineers, architects, testing laboratories, surveyors, attorneys and accountants) shall not be included in any cost of the Work or otherwise be the obligation of Owner, unless specified in the bidding documents or approved in advance by Owner in its sole discretion.

SC-13.03 Unit Price Work

**Delete Paragraph 13.03.E.1 in its entirety and insert the following in its place:**

1. the quantity of any item of Unit Price Work performed by Contractor results in an actual overrun or underrun of 25% of the estimated quantity of such item indicated in the Agreement;

**Article 14 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work**

SC-14.06 Owner May Stop the Work

**Add the following language to the beginning of Paragraph 14.06.A:**

If Owner observes a substantial violation of Paragraph 7.12, or...

**Article 15 – Payments to Contractor; Set-Offs; Completion; Correction Period**

SC-15.01 Progress Payments

**Amend the first sentence of Paragraph 15.01.A to read as follows:**

A. The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments, unless modified in the schedule provisions contained in the General Requirements, and will be incorporated ...

SC-15.06 Final Payment

**Add the following language after the last sentence of Paragraph 15.06.D:**

Owner shall, no later than fourteen (14) days before final payment is made, publish a notice of final payment at least twice in a legal newspaper of general circulation in any county where the work was contracted for or performed pursuant to Section 38-26-107, C.R.S. The requirements set forth in Section 38-26-107 C.R.S. are incorporated into this Paragraph 15.06 and shall control in the event of any conflict with the Contract Documents.

SC-15.08 Correction Period

**Amend the first sentence of Paragraph 15.08.A to read as follows:**

- A. If within two (2) years after the date of Substantial Completion...

**Article 17 – Final Resolution of Disputes**

SC-17.01 Methods and Procedures

**Add the new paragraph immediately after Paragraph 17.01.B:**

C. Any mediation or arbitration provision in the Contract Documents shall be optional and subject to the mutual consent of Owner and Contractor, each in their sole discretion. Compliance with any mediation or arbitration procedure shall not be a pre-requisite to bringing an action in a court of competent jurisdiction.

## **EXHIBIT E GENERAL SCOPE OF SERVICES**

### **Delivery Approach**

The project will be managed using an Integrated Project Delivery (IPD) model. Experience with early contractor involvement (ECI) or alternative delivery methods of design and construction is critical and necessary for the Contractor team. The Contractor team will be part of an overall project team consisting of the District's Project Manager(s) and other District staff, and the project Consultant team. This team will work together from the start of design through completion of construction. Each team member will have significant involvement in the design and construction concepts that are developed and utilized. Participation by all team members throughout each project is expected to allow innovation and enhance project quality and value.

In general, the Contractor will be responsible for early contractor engagement to influence the design for more efficient construction. Since the Contractor is being selected for both the preconstruction and construction phases of service and due to the opportunity for the Contractor's team to provide input to the design, it is expected that significant unforeseen changes, delays, and risks will be avoided, and that best value will be realized.

The Contractor's effort will consist of two phases.

#### **A. Phase 1 - Design / Preconstruction.**

1. Role: The Contractor and members of the Contractor's team will be actively engaged members of the project through all design milestones where an innovative approach to solving difficult construction problems is essential. The Contractor will be expected to attend design meetings as needed during all phases of the project. The selected Contractor is expected to bring construction expertise to the team and actively provide constructability review and construction planning including but not limited to scheduling, materials and subcontractor selection, design alternative assessment and selection, data collection assistance, contract requirements, and detailed cost estimating and pricing.
2. Pricing of the project along with a third-party independent cost estimate (ICE), will be completed at various design milestones as determined by the District with input from the project team. The third-party ICE firm will be solicited for and contracted separately by the District to assist in determining the reasonableness of the project cost. During the preconstruction phase, information provided by the Contractor will be reviewed and discussed, and consensus will be reached by the project team for the execution, schedule, and cost for each major decision. At various design milestones, the Contractor team, Consultant team and third-party ICE will discuss and reconcile cost estimates. Material and subcontractor pricing will be determined at certain project milestones determined by the team.
3. This phase of work will be paid at hourly billing rates for assistance with design.

#### **B. Phase 2 – Construction**

1. Role: The selected Contractor will serve as the General Contractor for construction of the Project and function as part of the Project Team during construction.
2. The selected Contractor will be expected to provide construction services for vertical building construction and existing building improvements. Examples as outlined in the Request for Proposals for this work. This is not intended to be inclusive of all possible services that could be required.
3. Between the 90% and 100% design phase, a construction contract(s) will be negotiated and executed on a cost-plus fixed percentage fee basis. Material and subcontractor pricing may be determined by a competitive quote process if warranted.

The Contractor's team is expected to bring experience and expertise in commercial building projects, with a history of delivering projects using early contractor involvement methods. The contractor may be asked to provide input, inform decisions, or perform the following type of tasks:

- Constructability methods, sequencing, schedule, and pre-construction pricing and estimates
- Long lead-time material procurement
- Prepare and submit construction permit applications as required
- Project management, onsite supervision, and coordination
- Labor, materials, and equipment
- Mechanical, electrical, and control systems
- Temporary facilities, site access, layout, and development
- Utility relocations/coordination
- Stormwater management during construction
- Construction under pedestrian and vehicular traffic
- Safety and security
- Traffic Control
- Subcontractor management
- Partnering
- Interaction with involved agencies / key stakeholders / local community
- Additional services, as needed

**EXHIBIT F**  
**COST FACTORS/PRICING**

Insert Phase 1 Costing Table, Phase 2 Costing Table, Labor & Equipment  
Rates Table