

DODGE COUNTY



REQUEST FOR BIDS

**2026 Dodge County HMA Paving Contract  
Highway Department, Dodge County, WI**

RFB NUMBER: #30 2026-03

Issued Date: March 17, 2026

RFB Opening  
9:00 AM, Tuesday, April 7, 2026

Bid Opening Location:

Dodge County Highway Office  
211 E Center St.  
Juneau, WI 53039  
(920) 386-3650

Submit Sealed RFB's To:

Dodge County Highway Office  
211 E Center St.  
Juneau, WI 53039  
(920) 386-3650

Office Hours: 8:00 am – 4:30 pm Monday through Friday

# SECTION 00010

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**DODGE COUNTY CORPORATION COUNSEL**

**Purchasing Division**

127 East Oak Street, Juneau, WI 53039

(920)386-4224

Email: [tsteinbach@co.dodge.wi.us](mailto:tsteinbach@co.dodge.wi.us)

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**ADVERTISEMENT FOR BIDS**

**RFB #30 2026-03 / 2026 DODGE COUNTY HMA PAVING CONTRACT**

Sealed bids shall be received at the Dodge County Highway Department office for the furnishing and installation of HMA pavement, pulverizing, foamed asphalt injection, milling, curb & gutter, and associated items until 9:00 A.M., local time, April 7, 2026. Bids will be opened and publicly read aloud immediately after specified closing time. Bids shall be clearly marked “RFB #30 2026-03 / 2026 DODGE COUNTY HMA Paving Contract”.

The Work consists of approximately 310,000 Square Yards of Removing Asphaltic Surface Milling, 56,000 Square Yards of Pulverize, Inject, & Relay Existing Pavement, 100,000 Tons of HMA Pavement, and 4,700 Feet of Concrete Curb & Gutter and all appurtenant items. Bids will be received on a unit price basis.

Work in this Contract is partially funded under the Wisconsin Department of Transportation Local Road Improvement Program (LRIP).

A bid bond in the form of a Cashier’s Check or Certified Check in the amount of five percent (5%) of the total bid amount made payable to Dodge County as a guarantee that if the bid is accepted, a Contract will be entered into and its performance properly secured within ten (10) days of the award of Contract must be submitted with the bid. In case the successful bidder shall fail to execute the Contract, the Cashier’s Check or Certified Check will be cashed and deposited to Dodge County as liquidated damages. The Cashier’s check or Certified Check will be returned after the project is awarded.

The successful Bidder shall be required to furnish a Performance Bond and a Payment Bond, each equal to one hundred percent (100%) of the Contract Price.

Bidders shall prequalify with the County on forms in the Bidding Documents not less than fourteen (14) days before the opening of bids.

Bidding documents will be available starting (March 17, 2026) on the [Dodge County website](#) and on [Demandstar](#).

The Dodge County Highway Department reserves the right to reject any or all bids, or to accept any bid considered most advantageous to the Dodge County Highway Department. All Bids shall remain subject to acceptance for sixty (60) days after the time set for opening bids.

Questions regarding this project should be directed to Trista Steinbach, Purchasing Agent at [tsteinbach@co.dodge.wi.us](mailto:tsteinbach@co.dodge.wi.us).

Publish: March 17, 2026

March 24, 2026

March 31, 2026

# Section 00100

## Instruction to Bidders

### PART 1 - GENERAL

#### 1.01 DEFINED TERMS

A. Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings below which are applicable to both the singular and plural thereof:

1. *Bidder* - The individual or entity who submits a Bid directly to OWNER.
2. *Issuing Office* - The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
3. *Successful Bidder* - The lowest responsible Bidder submitting a responsive Bid to whom OWNER (on the basis of OWNER's evaluation as hereinafter provided) makes an award.
- 4.

#### 1.02 OBTAINING BIDDING DOCUMENTS

A. Complete sets of the Bidding Documents may be obtained on the [Dodge County Website](#) and may also be obtained on [DemandStar](#).

#### 1.03 COMPLETE SETS OF BIDDING DOCUMENTS USED TO PREPARE BIDS

A. Complete sets of Bidding Documents must be used in preparing Bids; neither OWNER nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

#### 1.04 BIDDING DOCUMENTS FOR OBTAINING BIDS ONLY

A. OWNER and ENGINEER in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

#### 1.05 COMPETENT AND RELIABLE BIDDERS

A. Bids will only be received, opened and considered which are submitted by Bidders who have been pre-qualified by the Wisconsin Department of Transportation and/or determined by the OWNER to be "competent and reliable". A Bidder shall be deemed "competent and reliable" when having sufficient financial ability, equipment and experience in the proposed work to successfully perform the work. Bids may be rejected at any time in the bidding process whenever it comes to the attention of the OWNER a Bidder is not competent and reliable. Bidders shall submit prequalification statements to the OWNER no later than five (5) days prior to the time set for receiving bids. The statements shall be on forms in the attached document and as appended by the Bidder to provide further clarification of Bidder's ability to perform work contained in the Bid.

#### 1.06 SUBSURFACE AND PHYSICAL CONDITIONS

Not used.

#### 1.07 UNDERGROUND FACILITIES

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to OWNER and ENGINEER by owners of such Underground Facilities, including OWNER, or others.

#### 1.08 SITE ACCESS

- A. On request, OWNER will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

#### 1.09 BIDDER'S RESPONSIBILITY BEFORE SUBMITTING BID

- A. It is the responsibility of each Bidder before submitting a Bid to:
1. examine and carefully study the Bidding Documents, including any Addenda and the other related data identified in the Bidding Documents;
  2. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
  3. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, or performance of the Work;
  4. carefully study all reports of explorations and test of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 5.03 of the General Conditions;
  5. obtain and carefully study (or assume responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;
  6. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;
  7. become aware of the general nature of the work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents;
  8. correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;

9. promptly give ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by ENGINEER is acceptable to Bidder; and
10. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

#### 1.10 REQUIREMENTS OF ARTICLE 1.10 ARE MET

- A. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 1.10, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by ENGINEER are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

#### 1.11 SITE AND OTHER AREAS

- A. The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Bidding Documents.

#### 1.12 REQUESTS FOR INTERPRETATION OR CLARIFICATION

- A. All questions resulting in further clarification or modification to this (RFB) document will be handled by written addenda. Questions shall be directed to the Purchasing Agent via email to [tsteinbach@co.dodge.wi.us](mailto:tsteinbach@co.dodge.wi.us). Questions must be asked at least five (5) business days prior to the bid due date. Questions received after this time may not be answered. Any changes as a result of issues raised will be made by written addenda and posted on the [Dodge County website](#) and may also be obtained on [DemandStar](#). It is the firm/contractor's responsibility to check the website for addenda prior to submitting your bid. Oral and other interpretations or clarifications will be without legal effect.

#### 1.13 OWNER OR ENGINEER ISSUED ADDENDA

- A. Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by OWNER or ENGINEER

#### 1.14 AMOUNT OF BID SECURITY

- A. A bid bond must be submitted with your bid. The bid bond must be in the form of a Cashier's Check or Certified Check in the amount of five (5%) of the total bid amount.

#### 1.15 RETAINING BID SECURITY; FORFEITURE OF BID SECURITY

- A. The Bid security, which must be in the form of a cashier's check or certified check, of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 10 days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

#### 1.16 SUBSTANTIALLY COMPLETED AND COMPLETED DATES

- A. The number of days within which, or the dates by which, the Work is to be (a) Substantially Completed and (b) also completed and ready for final payment are set forth in the Agreement.

#### 1.17 LIQUIDATED DAMAGES

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

#### 1.18 SUBSTITUTE AND "OR-EQUAL" ITEMS

- A. The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by CONTRACTOR if acceptable to ENGINEER, application for such acceptance will not be considered by ENGINEER until after the Effective Date of the Agreement. The procedure for submission of any such application by CONTRACTOR and consideration by ENGINEER is set forth in the General Conditions and may be supplemented in the Supplementary Conditions.

#### 1.19 SUBMIT IDENTITY OF SUBCONTRACTORS AND MAJOR SUPPLIERS

- A. The Supplementary Conditions require the identity of Subcontractors and Major Suppliers to be submitted to OWNER. If OWNER or ENGINEER, after due investigation, has reasonable objection to any proposed Subcontractor or Supplier, OWNER may, before the Notice of Award is given, request Successful Bidder to submit a substitute, without an increase in the Bid.

#### 1.20 SUBSTITUTION OF SUBCONTRACTOR OR MAJOR SUPPLIER

- A. If apparent Successful Bidder declines to make any such substitution, OWNER may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which OWNER or ENGINEER makes no written objection prior to the giving of the Notice of Award will

be deemed acceptable to OWNER and ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in paragraph 7.06 of the General Conditions.

#### 1.21 CONTRACTOR'S EMPLOYMENT OF SUBCONTRACTOR OR SUPPLIER

- A. CONTRACTOR shall not be required to employ any Subcontractor or Supplier against whom CONTRACTOR has reasonable objection.

#### 1.22 BID FORM

- A. The Bid form is included with the Bidding Documents.

#### 1.23 FILLING IN BID FORM

- A. All blanks on the Bid form shall be completed by printing in ink or by typewriter and the Bid signed. A Bid price shall be indicated for each Bid item listed therein, or the words "No Bid", "No Charge", or "Not Applicable" entered.

#### 1.24 CORPORATION'S BID

- A. A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

#### 1.25 PARTNERSHIP'S BID

- A. A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.

#### 1.26 LIMITED LIABILITY COMPANY'S BID

- A. A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown below the signature.

#### 1.27 INDIVIDUAL'S BID

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

#### 1.28 JOINT VENTURE'S BID

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

#### 1.29 LOCATION OF NAMES

- A. All names shall be typed or printed in ink below the signatures.

### 1.30 ACKNOWLEDGE RECEIPT OF ADDENDUM

- A. The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid form.

### 1.31 ADDRESS AND PHONE NUMBERS

- A. The address and telephone number for communications regarding the Bid shall be shown.

### 1.32 QUALIFICATIONS TO DO BUSINESS IN WISCONSIN

- A. The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract.

### 1.33 UNIT PRICE

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.
- B. The total of all estimated prices will be determined as the sum of the products of the estimated quantity of each item and the unit price Bid for the item. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
- C. Discrepancies between the multiplication of Units of Work and Unit Prices will be resolved in favor of the Unit Prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

### 1.34 CASH ALLOWANCES

- A. The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances, if any, named in the Contract Documents as provided in paragraph 13.02 of the General Conditions.

### 1.35 BID SUBMITTAL

- A. A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement for Bids and shall be enclosed in an opaque sealed envelope plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to Dodge County Highway Department, 211 East Center Street, Juneau, WI 53039.

### 1.36 CORRECTIONS OF ERRORS IN BIDS

A. Corrections of errors in bids is governed by Section 66.0901(5), Wisconsin Statutes, which states:

(5) CORRECTIONS OF ERRORS IN BIDS. If a person submits a bid or proposal for the performance of public work under any public contract to be let by a municipality and the bidder claims that a mistake, omission or error has been made in preparing the bid, the bidder shall, before the bids are opened, make known the fact that an error, omission or mistake has been made. If the bidder makes this fact known, the bid shall be returned to the bidder unopened and the bidder may not bid upon the public contract unless it is readvertised and relet upon the readvertisement. If a bidder makes an error, omission or mistake and discovers it after the bids are opened, the bidder shall immediately and without delay give written notice and make known the fact of the mistake, omission or error which has been committed and submit to the municipality clear and satisfactory evidence of the mistake, omission or error and that it was not caused by any careless act or omission on the bidder's part in the exercise of ordinary care in examining the plans or specifications and in conforming with the provisions of this section. If the discovery and notice of a mistake, omission or error causes a forfeiture, the bidder may not recover the moneys or certified check forfeited as liquidated damages unless it is proven before a court of competent jurisdiction in an action brought for the recovery of the amount forfeited, that in making the mistake, error or omission the bidder was free from carelessness, negligence or inexcusable neglect.

#### 1.37 BID OPENING

A. Bids will be opened at the time and place indicated in the Advertisement or Invitation to Bid and read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

#### 1.38 BID ACCEPTANCE

A. All Bids will remain subject to acceptance for the period of time stated in the Bid form, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to the end of this Period.

#### 1.39 BID REJECTION

A. OWNER reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. OWNER further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsive. OWNER may also reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder. OWNER also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.

#### 1.40 MORE THAN ONE BID

A. More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder

has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

#### 1.41 BID EVALUATION REQUIREMENTS

- A. In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

#### 1.42 QUALIFICATIONS

- A. In evaluating Bidders, OWNER will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.

#### 1.43 OWNER INVESTIGATIONS

- A. OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.

#### 1.44 AWARD OF CONTRACT

- A. If the Contract is to be awarded, OWNER will award the Contract to the Bidder whose Bid is in the best interests of the Project.

#### 1.45 BID DISQUALIFICATION

- A. A Bid will be disqualified because of gross errors in computations, which cannot be resolved by mathematical correction without resorting to information not contained in the Bid. When the Bid contains a conflict between words and numerals, the words shall govern. When an error occurs in multiplication, the unit prices shall govern. Errors in extension may be corrected, providing that the unit cost is legible and can be definitely identified as complying with plans and specifications. The total Bid shall be adjusted in accordance with approved extension corrections. An extension may not be divided by the number of units specified to determine a unit cost, if such is omitted by the Bidder.

#### 1.46 CONTRACT SECURITY AND INSURANCE

- A. Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Bidder's requirements as to performance and payment Bonds and insurance. When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by such Bonds.

#### 1.47 SIGNING OF AGREEMENT

- A. When OWNER gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract

Documents which are identified in the Agreement as attached thereto. Within 10 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER. Within 10 days thereafter, OWNER shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

1.48 SALES AND USE TAXES

- A. Bidder shall investigate the statutory requirements for payment of sales and use taxes and, if required, include taxes in the Bid.

1.49 RETAINAGE

- A. Provisions concerning retainage are set forth in the Agreement

PART 2 – PRODUCTS

Not Used.

PART 3 - EXECUTION

Not Used.

END OF SECTION

# SECTION 00300

## BID FORM

OWNER: Dodge County Highway Department, Dodge County, Wisconsin  
PROJECT: RFB # 30 2026-03 / 2026 Dodge County HMA Paving Contract  
BIDS DUE: 9:00 AM Local Time, Tuesday April 7, 2026  
THIS BID IS SUBMITTED TO: Dodge County Highway Department  
211 East Center Street  
Juneau, WI 53039

- 1.01 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.
- 2.01 Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of OWNER.
- 3.01 In submitting this Bid, Bidder represents, as set forth in the Agreement, that:

- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all which is hereby acknowledged:

Addendum No.

Addendum Date

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- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the work.
- C. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relation to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities), if any, which have been identified in the Supplementary Conditions as provided in paragraph 5.03 of the General Conditions.
- E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means,

methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.

- F. Bidder does not consider that any further examinations, investigations, exploration, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
  - G. Bidder is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents.
  - H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
  - I. Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by ENGINEER is acceptable to Bidder.
  - J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- 4.01 Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
- 5.01 Bidder will complete the Work in accordance with the Contract Documents for the following unit prices:

Item No.	WisDOT No.	Description	Units	Estimated Quantity	Unit Price	Extension
<b>BASE BID</b>						
CTH N (CTH P – EAST CO. LINE) Project 313-2205						
1	204.0120	Removing Asphaltic Surface Milling	SY	23,970		
2	325.0100	Pulverize and Relay	SY	23,940		
3	SPV.0180	Pulverize, Inject, and Relay Existing Pavement	SY	23,920		
4	455.0605	Tack Coat	GAL	3,080		
5	SPV.0195	Asphalt Stabilizing Agent (Foamed Asphalt)	TON	185		
6	460.2000	Incentive Density HMA Pavement	DOL	\$3,620	\$1	\$3,620
7	460.5223	HMA Pavement, 3 LT 58-28 S	TON	3,110		
8	460.5244	HMA Pavement, 4 LT 58-34 S	TON	2,550		
9	465.0120	Asphaltic Surface Driveways and Field Entrances	TON	5		
10	601.0557	Concrete Curb & Gutter 6-Inch Sloped 36-Inch Type D	LF	430		
11	619.1000	Mobilization	LS	1		
12	643.5000	Traffic Control (Project)	LS	1		
13	648.0100	Locate No-Passing Zones	MI	1.8		
14	740.0440	Incentive IRI Ride	DOL	\$7,036	\$1	\$7,036
				<b>SUBTOTAL</b>		
CTH G (LOWELL – CTH S) Project 313-2311						
1	204.0120	Removing Asphaltic Surface Milling	SY	93,100		
2	325.0100	Pulverize and Relay	SY	92,900		
3	455.0605	Tack Coat	GAL	17,040		
4	460.2000	Incentive Density HMA Pavement	DOL	\$22,440	\$1	\$22,440
5	460.5223	HMA Pavement, 3 LT 58-28 S	TON	25,240		

6	460.5244	HMA Pavement, 4 LT 58-34 S	TON	9,820		
7	465.0120	Asphaltic Surface Driveways and Field Entrances	TON	40		
8	601.0557	Concrete Curb & Gutter 6-Inch Sloped 36-Inch Type D	LF	1,700		
9	619.1000	Mobilization	LS	1		
10	643.5000	Traffic Control (Project)	LS	1		
11	648.0100	Locate No-Passing Zones	MI	4.95		
12	740.0440	Incentive IRI Ride	DOL	\$19,672	\$1	\$19,672
				<b>SUBTOTAL</b>		
CTH H (CTH Z – CTH YY) Project 313-2312						
1	204.0120	Removing Asphaltic Surface Milling	SY	29,105		
2	325.0100	Pulverize and Relay	SY	29,105		
3	SPV.0180	Pulverize, Inject, and Relay Existing Pavement	SY	29,310		
4	455.0605	Tack Coat	GAL	3,810		
5	SPV.0195	Asphalt Stabilizing Agent (Foamed Asphalt)	TON	195		
6	460.2000	Incentive Density HMA Pavement	DOL	\$3,862	\$1	\$3,862
7	460.5223	HMA Pavement, 3 LT 58-28 S	TON	2,820		
8	460.5245	HMA Pavement, 5 LT 58-34 S	TON	2,015		
9	465.0120	Asphaltic Surface Driveways and Field Entrances	TON	40		
10	465.0580	Asphaltic Rumble Strips Traverse	SY	65		
11	619.1000	Mobilization	LS	1		
12	643.5000	Traffic Control (Project)	LS	1		
13	648.0100	Locate No-Passing Zones	MI	2.135		
14	740.0440	Incentive IRI Ride	DOL	\$8,540	\$1	\$8,540
				<b>SUBTOTAL</b>		
CTH P (STH 60 – STH 33) Project 313-2314						

1	204.0120	Removing Asphaltic Surface Milling	SY	136,015		
2	325.0100	Pulverize and Relay	SY	136,015		
3	455.0605	Tack Coat	GAL	26,845		
4	460.2000	Incentive Density HMA Pavement	DOL	\$37,854	\$1	\$37,854
5	460.5223	HMA Pavement, 3 LT 58-28 S	TON	34,070		
6	460.5244	HMA Pavement, 4 LT 58-34 S	TON	13,250		
7	465.0120	Asphaltic Surface Driveways and Field Entrances	TON	130		
8	601.0557	Concrete Curb & Gutter 6-Inch Sloped 36-Inch Type D	LF	1,850		
9	619.1000	Mobilization	LS	1		
10	643.5000	Traffic Control (Project)	LS	1		
11	648.0100	Locate No-Passing Zones	MI	7.239		
12	740.0440	Incentive IRI Ride	DOL	\$28,956	\$1	\$28,956
				<b>SUBTOTAL</b>		
CTH KK (IH 41 – CTH K) Project 313-2401-KK						
1	204.0120	Removing Asphaltic Surface Milling	SY	25,720		
2	325.0100	Pulverize and Relay	SY	25,720		
3	SPV.0180	Pulverize, Inject, and Relay Existing Pavement	SY	26,405		
4	455.0605	Tack Coat	GAL	3,435		
5	SPV.0195	Asphalt Stabilizing Agent (Foamed Asphalt)	TON	175		
6	460.2000	Incentive Density HMA Pavement	DOL	\$4,648	\$1	\$4,648
7	460.5223	HMA Pavement, 3 LT 58-28 S	TON	3,270		
8	460.5244	HMA Pavement, 4 LT 58-34 S	TON	2,545		
9	465.0120	Asphaltic Surface Driveways and Field Entrances	TON	32		
10	601.0557	Concrete Curb & Gutter 6-Inch Sloped 36-Inch Type D	LF	710		
11	619.1000	Mobilization	LS	1		

12	643.5000	Traffic Control (Project)	LS	1		
13	648.0100	Locate No-Passing Zones	MI	1.771		
14	740.0440	Incentive IRI Ride	DOL	\$7,084	\$1	\$7,084
				<b>SUBTOTAL</b>		
<b>BASE BID</b>			<b>TOTAL</b>			

TOTAL BASE BID

\_\_\_\_\_ and in words \_\_\_\_\_  
 \_\_\_\_\_ dollars  
 and \_\_\_\_\_ cents.

- 6.01 Bidder agrees that the Work will be substantially complete on October 16, 2026 and ready for final payment in accordance with Article 15.06 of the General Conditions on or before October 30, 2026.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which is specified in Document 00500, Agreement, Article 1.04.
- 7.01 The following documents are attached to and made a condition of this Bid:
  - A. Required Bid security in the form Certified Check or Bank Cashier's Check.
- 8.01 The terms used in this Bid, which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents and have the meanings assigned to them in the General Conditions.
- 9.01 Communications concerning this Bid shall be addressed to the address of the Bidder indicated below:

Company Name: \_\_\_\_\_

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Submitted on \_\_\_\_\_, 20\_\_.

**LISTING OF SUBCONTRACTORS**

All Bidders are required to list the subcontractors related to their branch of work.

Failure to list subcontractors who are to perform work may be considered cause for rejection of the Bid.

After the Contract has been let, the undersigned Bidder will employ, subject to the approval of the OWNER, the following subcontractors. This list shall not be added to nor altered without the written request by the CONTRACTOR and the written consent of the OWNER.

1. Class of Work: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

2. Class of Work: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

3. Class of Work: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

4. Class of Work: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

5. Class of Work: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

(Append additional pages as may be required to fully list subcontractors on this Contract)

If BIDDER is:

An Individual

By: \_\_\_\_\_ (SEAL)

(Individual's Name Typed or Printed)

doing business as \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

A Partnership

Partnership Name: \_\_\_\_\_ (SEAL)

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

(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_ FAX No. \_\_\_\_\_

A Corporation

By: \_\_\_\_\_  
(Corporation name)

State of Incorporation: \_\_\_\_\_

Type (General Business, Professional, Service, Limited Liability):  
\_\_\_\_\_

By: \_\_\_\_\_  
(Signature -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_  
\_\_\_\_\_

(Title)  
(Corporate Seal)

Attest: \_\_\_\_\_  
(Secretary)

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

A Joint Venture

Joint Venturer Name: \_\_\_\_\_ (SEAL)

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

(Signature -- attach evidence of authority to sign)

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

Business Address \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Joint Venturer Name: \_\_\_\_\_ (SEAL)

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

(Signature -- attach evidence of authority to sign)

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

Business Address \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Phone and FAX Number, and Address for receipt of official communications:

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

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

END OF SECTION



6. Has the Bidder been involved in litigation, arbitration, and/or mediation in the past ten years regarding failure to pay subcontractors or suppliers? If yes, provide details, including court case numbers, dates of dispute, and outcome or resolution for each dispute.

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Company Identity

Number of years in business under present firm name \_\_\_\_\_

Classification of work which firm is seeking qualification \_\_\_\_\_

Please check one, two or three:

1. Corporation \_\_\_\_\_ 2. Partnership \_\_\_\_\_ 3. Sole proprietor \_\_\_\_\_

Principal Individuals:

(If a Corporation Answer Below) (If a Partnership Answer Below)

President \_\_\_\_\_ Name of Partner \_\_\_\_\_

Vice-Pres. \_\_\_\_\_ Name of Partner \_\_\_\_\_

Secretary \_\_\_\_\_ (If a Sole Proprietor Answer Below)

Treasurer \_\_\_\_\_ Name of Sole Proprietor \_\_\_\_\_

If a Corporation answer below:

(1) Licensed to do business in Wisconsin (month/year) \_\_\_\_\_

(2) When Incorporated \_\_\_\_\_ (3) In what State \_\_\_\_\_

Contractual Responsibility

1. Has Firm ever failed in the past ten years to complete work awarded to it on time?

\_\_\_\_\_

2. Has any officer or partner of firm ever failed in the past ten years to complete a construction contract handled in his own name on time? \_\_\_\_\_

3. Has any officer or partner of firm ever been an officer or partner of some other organization during the past ten years that failed to complete a construction contract on time? \_\_\_\_\_

4. Has Firm asked to be relieved from a bid submitted by it to a public awarding authority during the past ten years? \_\_\_\_\_

5. Has Firm ever been charged with or convicted of a violation of any wage schedule? \_\_\_\_\_

\_\_\_\_\_

If you answered yes to any of the above, state:

(1) Date: \_\_\_\_\_

(2) Claimant: \_\_\_\_\_

(3) Claimant's address: \_\_\_\_\_

(4) Full particulars in each instance: \_\_\_\_\_

**AFFIDAVIT**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn, deposes and says that he  
(Officer)

is the \_\_\_\_\_ of the above \_\_\_\_\_  
(official capacity) (business name)

and that the answers to the foregoing questions and all statements therein contained are true and correct, and that any Owner, Bonding Company, or other agency herein named is hereby authorized to supply the County with any information deemed necessary to verify this statement.

\_\_\_\_\_  
(Officer)

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

\_\_\_\_\_  
(Notary Public)

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

**\*\*Dodge County reserves the right to reject any bids submitted by a bidder that has not been prequalified 5 days prior to the bid submittal date.\*\***

END OF SECTION

## Section 00500

### Agreement

#### 1.01 INTRODUCTION

- A. THIS AGREEMENT is dated as of \_\_\_\_\_ by and between the Dodge County Highway Commission, hereinafter called OWNER and \_\_\_\_\_ hereinafter called CONTRACTOR
- B. OWNER and CONTRACTOR, in consideration of mutual covenants hereinafter set forth agree as follows:

#### 1.02 WORK

- A. CONTRACTOR shall complete Work as specified or indicated in Contract Documents. Work is generally described as follows: removing asphaltic surface milling; pulverize and relay pavement; pulverize, inject, and relay pavement; HMA pavement; and concrete curb & gutter for the following county trunk highways:

CTH N (CTH P to East County Line)  
CTH G (Lowell to CTH S)  
CTH H (CTH Z to CTH YY)  
CTH P (STH 60 to STH 33)  
CTH KK (IH 41 to CTH K)

- B. Project for which Work under the Contract Documents may be generally described is as follows:

RFB #30 2026-03 / 2026 DODGE COUNTY HMA PAVING CONTRACT

#### 1.03 ENGINEER

- A. Project has been designed by: Dodge County Highway Department.  
211 E. Center St.  
Juneau, WI 53039  
(920) 386-3650

who is hereinafter called ENGINEER and who will assume duties and responsibilities and will have rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of Work in accordance with Contract Documents.

1.04 CONTRACT TIME

A. Time is of the essence

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

B. All work under this contract shall be substantially completed by October 16, 2026, and ready for final payment in accordance with Article 15.06 of the General Conditions on or before October 30, 2026.

C. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and OWNER will suffer financial loss if Work is not complete within time specified in Paragraphs A and B above, plus any extensions thereof allowed in accordance with Article 11 of General Conditions. They also recognize the delays, expense and difficulties involved in proving in legal or arbitration proceedings the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER **two hundred fifty dollars (\$250.00)** for each day that expires after time specified in Paragraph B above, until Work is complete.

1.05 CONTRACT PRICE

OWNER shall pay CONTRACTOR for performance of Work in accordance with Contract Documents in current funds as follows:

\$ \_\_\_\_\_ **for the Base Bid**  
\$ \_\_\_\_\_ **Additional amount for the approved Alternate Bid**  
\$ \_\_\_\_\_ **Total Bid Price.**

See attached copy of Bid Form.

1.06 PAYMENT PROCEDURES

A. All services and products covered by this Agreement and the associated Statement of Work must be performed, delivered, provided by Contractor or its Subcontractor(s) to the satisfaction of Dodge County no later than October 30, 2026 and invoiced by December 31, 2026.

B. CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of General Conditions. Applications for Payment will be processed by ENGINEER/OWNER as provided in General Conditions.

C. Progress Payments. OWNER shall make progress payments on account of Contract Price on basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER/OWNER, on or about the 1st day of each month during construction as provided below. Progress payments will be on basis of progress of Work measured by schedule of values provided for in paragraph 15.01 of General Conditions.

- D. The OWNER shall retain 5% of the amount due the CONTRACTOR until 50% of the amount due the CONTRACTOR is reached. At 50% completion, further partial payments shall be made in full to CONTRACTOR and no additional amounts may be retained unless ENGINEER/OWNER certifies that job is not proceeding satisfactorily, but amounts previously retained shall not be paid to CONTRACTOR. At 50% completion or any time thereafter when progress of work is not satisfactory, additional amounts may be retained but in no event shall total retainage be more than 10% of value of work completed.
- E. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 98% of Contract Price, less such amounts as ENGINEER shall determine in accordance with Article 15.03 of the General Conditions and less 100% of the ENGINEER'S estimate of the value of Work to be completed or corrected attached to the certificate of Substantial Completion.
- F. Final Payment. Upon final completion and acceptance of Work in accordance with Article 15.06 of the General Conditions, OWNER shall pay remainder of Contract Price as recommended by ENGINEER as provided in said Article 15.06.

#### 1.07 CONTRACTOR'S REPRESENTATIONS

- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which has been identified in the Supplementary Conditions as provided in Article 5.03 of the General Conditions.
- E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.
- F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at

the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

- G. CONTRACTOR is aware of the general nature of the work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

#### 1.08 CONTRACT DOCUMENTS

- A. Contract Documents which comprise entire agreement between OWNER and CONTRACTOR are attached to this Agreement, made a part hereof and consists of all items listed in Section 00010, Table of Contents.

#### 1.09 MISCELLANEOUS

- A. Terms used in this Agreement which are defined in Article 1 of General Conditions shall have meanings indicated in General Conditions.
- B. No assignment by a party hereto of any rights under or interest in Contract Documents will be binding on another party hereto without written consent of party sought to be bound; and specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to extent that effect of this restriction may be limited by law), and unless specifically stated to contrary in any written consent to an assignment, no assignment will release or discharge assignor from any duty of responsibility under Contract Documents.
- C. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in Contract Documents.
- D. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

## 1.10 OTHER PROVISIONS

- A. Performance and other bonds. CONTRACTOR will be required to furnish bonds in accordance with Section 00610 and 00620.

## 1.11 WARRANTY

- A. CONTRACTOR shall provide a one (1) year warranty at no extra charge for defects in the construction, installation and materials incorporated into the project. The CONTRACTOR shall be liable for the acceptable condition of all materials and work, both during construction and throughout the warranty period.
- B. CONTRACTOR guarantees that all methods and materials shall be as specified in the Proposal submitted by CONTRACTOR in response to RFB #30 2026-03. CONTRACTOR warrants that all work shall be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.
- C. All work performed by the CONTRACTOR shall be and is warranted for a period of one (1) year from an after the final completion and acceptance date of work by OWNER. If any defect appears either during construction or within said warranty period, rework, which in the opinion of the OWNER, is necessary as the result of use of materials, equipment, or workmanship which are inferior, defective or not in accordance with the terms of the Contract, the CONTRACTOR shall, within ten (10) days upon receipt of the written notice from the OWNER, and without expense to the OWNER, perform the necessary work to a satisfactory condition, correct all defects, make good and damage to the structure, site, defects, or contents thereof, which damage, in the opinion of the OWNER, results from use of such inferior or defective materials, equipment or workmanship. Any rework performed as a result of OWNER's written notice to CONTRACTOR shall be warranted by CONTRACTOR for a period of two years after completion of said rework and acceptance of rework by OWNER.
- D. If within ten (10) days after written notice referred in C. above, the CONTRACTOR fails to comply with the terms of any warranty herein contained, the OWNER may have the defects corrected and the CONTRACTOR or his/her surety shall be liable for all expenses incurred; except when, in the opinion of the OWNER, delay in correcting the defects would cause substantial cost or significant damage, repairs may be made by the OWNER without notice being given to the CONTRACTOR and the CONTRACTOR shall pay the cost thereof. CONTRACTOR shall provide performance bond that comports with this paragraph.
- E. All special warranties applicable to specific parts of the work as may be stipulated in the Contract Specifications or other documents being part of this Contract shall be subject to the terms of this Article or the terms of any special warranty, whichever is more favorable to the OWNER. All special manufacturers' warranties shall be delivered to the OWNER prior to the acceptance of the work.

## 1.12 INDEMNIFICATION CLAUSE

- A. CONTRACTOR agrees to defend, and hold COUNTY/OWNER harmless from any and all claims and suits for any losses, damages, or costs arising therefrom, alleged and asserted by a third party to the extent any said claim or suit arises from the indemnifying party's gross negligence or willful misconduct which results in (i) bodily injury (ii) any loss, damage, or destruction of personal tangible property. This

obligation is conditioned on the indemnifying party receiving from the other party prompt written notification of any such claim and the other party cooperating fully with the indemnifying party in defense of any such action.

- A. Nothing herein shall be construed, interpreted, or operate as a waiver of any immunity, limitation on damages, notice requirements or statute limitations afforded the OWNER pursuant to Section 393.80, Wis. Stats., or by any other law.

1.13 SIGNATURES

- A. IN WITNESS WHEREOF, parties hereto have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of Contract Documents have been signed or identified by OWNER and CONTRACTOR on their behalf.

AUTHORIZATION TO EXECUTE CONTRACT. OWNER has or will have sufficient funds to meet its obligations under this Contract.

FOR DODGE COUNTY

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

Date: \_\_\_\_\_, 20\_\_\_\_

Nate Minnig  
Interim Highway Commissioner

FOR THE CONTRACTOR

\_\_\_\_\_  
[Company name]

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

\_\_\_\_\_  
President/Partner/Sole Owner

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

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

\_\_\_\_\_  
Secretary/Partner

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

STATE OF WISCONSIN)  
  :SS.  
COUNTY OF \_\_\_\_\_)

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
\_\_\_\_\_, and \_\_\_\_\_, to me known to be such  
\_\_\_\_\_ and \_\_\_\_\_ who executed the foregoing  
instrument, and acknowledged to me that they executed the foregoing instrument as such officers of  
the Contractor.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, WI

My Commission expires/is: \_\_\_\_\_

END OF SECTION

## SECTION 00600

### Contract Forms

#### 1.01 FORMS INCLUDED BY REFERENCE

A. Notice of Award

B. Notice to Proceed

#### PART 2 - PRODUCTS

Not used.

#### PART 3 - EXECUTION

Not used.

END OF SECTION

**SECTION 00610**  
**Performance Bond**

KNOWN ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal, and  
(Corporation, Partnership, or Individual)

and \_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called, Surety, are held and firmly bound unto the

**Dodge County Highway Department**

\_\_\_\_\_  
(Name of Owner)

**211 E. Center Street, Juneau, WI 53039**

\_\_\_\_\_  
(Address of Owner)

hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) 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 CONDITION OF THIS OBLIGATION is such as that whereas, the Principal entered into a  
certain CONTRACT with the OWNER, dated the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, a  
copy of which is hereto attached and made a part hereof for the construction of:

**2026 DODGE COUNTY HMA PAVING PROJECT**  
**HIGHWAY DEPARTMENT, DODGE COUNTY**  
**RFB #30 2026-03**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the  
undertakings, covenants, terms, conditions, and agreements of said CONTRACT 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 one year guaranty period, and if he shall satisfy all claims and demands incurred under  
such CONTRACT, and shall fully indemnify and save harmless the OWNER from all costs 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 and 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  
charge, extension or time, alteration, or addition to the terms of the CONTRACT or to the WORK to be  
performed there under of 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 CONTRACT 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.

IN WITNESS WHEREOF, this instrument is executed in three counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_, day of \_\_\_\_\_, 20 \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Principal

By: \_\_\_\_\_  
Principal Secretary

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

Name: \_\_\_\_\_  
(type or print)

Name: \_\_\_\_\_  
(type or print)

(Seal)

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

\_\_\_\_\_  
Witness as to Surety

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute bond.

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

ATTEST:

\_\_\_\_\_  
SURETY

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

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

(Seal)

\_\_\_\_\_  
Attorney-in-fact

Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness as to Surety

Address: \_\_\_\_\_  
\_\_\_\_\_

END OF SECTION

**SECTION 00620**  
**Payment Bond**

KNOWN ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal, and  
(Corporation, Partnership, or Individual)

and \_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)  
hereinafter called, Surety, are held and firmly bound unto the  
**Dodge County Highway Department**  
\_\_\_\_\_  
(Name of Owner)  
**211 E. Center Street, Juneau, WI 53039**  
\_\_\_\_\_  
(Address of Owner)

hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) 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 CONDITION OF THIS OBLIGATION is such as that whereas, the Principal entered into a  
certain CONTRACT with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, a  
copy of which is hereto attached and made a part hereof for the construction of:

**2026 DODGE COUNTY HMA PAVING PROJECT**  
**HIGHWAY DEPARTMENT, DODGE COUNTY**  
**RFB # 30 2026-03**

NOW, THEREFORE, if the Principal shall promptly 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 CONTRACT, and any authorized extension or modification thereof, including all  
amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools,  
consumed 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  
charge, extension or time, alteration, or addition to the terms of the CONTRACT or to the WORK to be  
performed there under of 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 CONTRACT 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.

IN WITNESS WHEREOF, this instrument is executed in three counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_, day of \_\_\_\_\_, 20 \_\_\_\_\_.

ATTEST: \_\_\_\_\_  
Principal

By: \_\_\_\_\_ By: \_\_\_\_\_  
Principal Secretary  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
(type or print) (type or print)

(Seal) \_\_\_\_\_ Title: \_\_\_\_\_  
\_\_\_\_\_ Address: \_\_\_\_\_  
Witness as to Surety

Address: \_\_\_\_\_  
\_\_\_\_\_

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute bond.

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

ATTEST: \_\_\_\_\_  
SURETY  
(Surety) Secretary

(Seal) \_\_\_\_\_ By: \_\_\_\_\_  
Attorney-in-fact

Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Witness as to Surety

Address: \_\_\_\_\_  
\_\_\_\_\_

END OF SECTION

## SECTION 00700 GENERAL CONDITIONS

General Conditions of the Construction Contract for this project shall be EJCDC C-700 (Rev. 1), 2013 Edition as follows.

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

## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



## Endorsed by

These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

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**STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION  
CONTRACT**

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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

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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.
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.
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.

## 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 EJDC C-700 (Rev. 1) Standard General Conditions of the Construction Contract.

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

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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:
  - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  - 2. a preliminary Schedule of Submittals; and
  - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

## 2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

## 2.05 *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.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

#### *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.

### **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

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, 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.
2. 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:*

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

Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer 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:
  1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
  2. have or acquire any title or ownership rights in any other Contract Documents,  
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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.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times 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:
  - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. abnormal weather conditions;
  - 3. 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
  - 4. 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.

## **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:*

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, 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 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:
  - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
  - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
  - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely 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:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 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:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
  2. is of such a nature as to require a change in the Drawings or Specifications; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 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:*
1. 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:
    - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
  - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
  - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
  - c. Contractor failed to give the written notice 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:
  1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
  2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
    - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
    - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
    - d. 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 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:*
1. 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:
    - a. 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;
    - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
    - c. 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
    - d. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, 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:
  1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  2. 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, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
  1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for 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

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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 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, 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 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.
    - 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

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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 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 EJDC C-700 (Rev. 1) Standard General Conditions of the Construction Contract.

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."
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 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.
- 6.06 *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.
- 6.07 *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, 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.

#### *6.08 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 EJDC C-700 (Rev. 1) Standard General Conditions of the Construction Contract.

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:

- 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

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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 considered 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.
  - 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 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  
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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 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 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 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.
  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 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 Drawings, 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:
  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.

## 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 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

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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:
  - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

### 8.03 *Legal Relationships*

- A. If, in the course of performing other work 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 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.

*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 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

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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 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 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
  - 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 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 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 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.
- B. *Cash Allowances*: Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment 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:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs

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materially and significantly from the estimated quantity of such item indicated in the Agreement;

2. there is no corresponding adjustment with respect to any other item of Work; and
3. 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.

## **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:
  1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval

prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests 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 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.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, 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:*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property

insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

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

C. *Review of Applications:*

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

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment,

including final payment, will impose responsibility on Engineer:

- a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
  6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
    - a. the Work is defective, requiring correction or replacement;
    - b. the Contract Price has been reduced by Change Orders;
    - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
    - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
    - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

*D. Payment Becomes Due:*

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

*E. Reductions in Payment by Owner:*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. claims have been made against Owner 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;
  - b. Contractor has failed to take reasonable and customary measures to avoid

damage, delay, disruption, and interference with other work at or adjacent to the Site;

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

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EJDC C-700 (Rev. 1) Standard General Conditions of the Construction Contract.

- 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.

#### 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 EJDC C-700 (Rev. 1) Standard General Conditions of the Construction Contract.

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.

## **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  
  
(2) 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.

## SECTION 00810 SUPPLEMENTARY CONDITIONS

Following modifications, change, delete from, or add to “Standard General Conditions of the Construction Contract”, EJCDC Document C-700 (Rev. 1), 2013 Edition. Where any Article of the General Conditions is modified or changed, or any paragraph, subparagraph or clause thereof is modified, changed or deleted by these supplements, unaltered provisions of the article, paragraph, subparagraph or clause shall remain in effect.

SC1

Terms used in these Supplementary Conditions which are defined in Standard General Conditions of the Construction Contract (C-700 (Rev. 1), 2013 Edition) have the meanings assigned to them in General Conditions.

These specifications are written in imperative and streamlined form. This imperative language is directed to CONTRACTOR, unless specifically noted otherwise. The words “shall be” shall be included by inference where a colon(:) is used within sentences or phrases.

SC 6.03

The limits of liability for the insurance referenced in paragraph 6.03 I. 2. of the General Conditions shall provide coverage for not less than the following amounts or greater, where required by Laws and Regulations:

1. If, for any reason, the insurance coverage required herein lapses, OWNER declares this Contract null and void as of the date no valid insurance policy was in effect. Certificates of policy renewals shall be furnished to the OWNER throughout the term of this Contract.
2. The following insurance must be in effect and continue in effect during the term of this Contract in not less than the following amounts:

- a. Worker’s Compensation, etc., under Paragraphs 5.04A of the General Conditions:

Coverage A: Limits - Statutory

Coverage B: Employee Liability Limits:

Bodily Injury by Accident	\$100,000 Each Accident
Bodily Injury by Disease	\$100,000 Each Employee
Bodily Injury by Disease	\$500,000 Policy Limit

- b. Commercial General Liability:

Single Contract Award  
Minimum Limits of Insurance

General Aggregate Limit (Other than Products-Completed Operations)	\$2,000,000
Products-Completed Operations Aggregate Limit	\$2,000,000
Personal & Advertising Injury Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000

Minimum limits specified can be obtained either through the basic policies or in conjunction with an umbrella policy.

c. General Liability Policies Must Also Include:

Contractual Liability  
Independent Contractors  
Explosion, Collapse & Underground

NOTE: Form must be on an occurrence basis, not claims-made basis.

d. Automobile Liability:

Minimum Limits of Insurance

Bodily Injury and Property Damage- Combined Single Limit	\$2,000,000
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The policy must include all owned, non-owned, and hired automobiles.

e Umbrella Liability:	\$5,000,000
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3. Contractor Property Insurance Requirements

The CONTRACTOR shall obtain:

Installation Floater on below-ground structures and related equipment on this project.

The policies shall meet the following requirements:

- a. The policy limits should be 100% of the completed value of the Work with the OWNER, ENGINEER, and CONTRACTOR, as named insured under the policy.
- b. Coverage should be on all risk, replacement cost basis, and include water damage, flood, and hydrostatic pressure.

4. Hold harmless agreement/indemnification

The CONTRACTOR agrees to indemnify to hold harmless the OWNER, ENGINEER, and their agents and employees, from and against any and all claims, damages, losses, and expenses, including reasonable attorney's fees in case it shall be necessary to file an action, arising out of performance of the work herein, that is:

- a. for bodily injury, illness, or death, or for property damage, including loss of use, and
- b. caused in whole or in part by CONTRACTOR's negligent act or omission, or that of a SUBCONTRACTOR, or that of anyone employed by them or for whose acts the CONTRACTOR or SUBCONTRACTOR may be liable.

5. Safety precautions and programs

Each CONTRACTOR (including SUBCONTRACTOR) has the duty of providing for and overseeing all safety order, precautions, and programs necessary to the reasonable safety of the work. In this connection, CONTRACTOR shall take reasonable precautions for the safety of all employees and other persons whom the work might affect, all work and materials incorporated in the project, and all property and improvements on the construction site and adjacent to the construction site, complying with all applicable laws, ordinances, rules, regulations and others.

SC 13.03

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

1. the quantity of a major bid item (one being at least 5% of the original contract value) is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity applies only to the portion in excess of 125 percent of the original contract bid item quantity, or in case of a decrease below 75 percent, to the work actually performed.

SC 15.08

Delete in line one of paragraph 15.08 A. the phrase "after the date of Substantial Completion" and insert in its place the following:

"after the date of Final Completion"

END OF SECTION

# SPECIAL PROVISIONS

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## **SPECIAL PROVISIONS**

### **1. General**

The work under this contract for the milling, pulverizing and paving of county highways shall be in accordance with the plans therefore and shall be executed under the requirements of the Standard General Conditions, the Supplementary Conditions, the State of Wisconsin, Department of Transportation, Standard Specifications for Highway and Structure Construction, current edition and all current supplements and additions, and these Special Provisions. Pertinent references to Department or State in the Standard Specifications shall, in most instances, mean the Owner, being the Dodge County Highway Department. The term 'Engineer' shall mean the authorized representative of the Dodge County Highway Department.

### **2. Scope of Work**

Work under this contract shall consist of furnishing labor, equipment and necessary materials for pulverizing, injecting & relaying existing pavement, milling existing pavement, HMA pavement, concrete curb and gutter, and all incidental items necessary to complete the work as shown on the plans and included in the proposal and contract or as directed by the Owner.

### **3. Prosecution and Progress**

Begin work within ten calendar days after the engineer issues a written notice to do so. It is anticipated all work under this contract may be completed under one mobilization into Dodge County. An item for Mobilization is included in the Bid Form for each highway segment. If the Contractor completes all work on more than one highway segment during a continuous work phase (a single mobilization into the county), the first highway segment's mobilization shall be paid at the unit price listed. The second and all succeeding highway segment's mobilizations shall be paid at one-half (1/2) the respective unit price listed. All Notices to Begin Work shall include the highway segments to be completed during the initial mobilization.

### **4. Construction Noise Abatement**

In order to abate objectionable noise to the extent feasible, motorized construction equipment shall not be operated between the hours of 10:00 p.m. and 6:00 a.m. without the prior written approval of the Owner.

### **5. Traffic Control**

The Contractor shall submit a price for traffic control based on the following:

- A. All roads shall be closed to through traffic and a detour route may be established and maintained by the Owner throughout the course of work on each highway segment.
- B. The Contractor shall provide necessary traffic control within the project limits to maintain local and emergency traffic at all times and protect his work.

**6. Holiday Work Restrictions**

Unless authorized in writing by the Engineer, do not perform work on, nor haul materials of any kind along or across any portion of the highway carrying traffic on roads in this contract, and entirely clear the traveled way and shoulders of such portions of the highway of equipment, barricades, signs, lights and any other material that might impede the free flow of traffic during the following holiday periods:

From noon Friday, May 22, 2026, to 6:00 A.M. Tuesday, May 26, 2026.

From noon Friday, July 3, 2026, to 6:00 A.M. Monday, July 6, 2026.

From noon Friday, September 4, 2026, to 6:00 A.M. Tuesday, September 8, 2026.

**7. Contractor’s Personnel**

The Contractor shall have on the project at all times capable and experienced personnel in sufficient number to properly execute the work. If the Owner determines at any time that additional personnel and/or equipment are required to secure satisfactory mixing, paving, or traffic control operations, the Owner may require the Contractor to stop construction until the additional personnel and/or equipment are available at the job site.

**8. Type and Grade of Asphaltic Material**

The asphalt binder shall be Asphalt Material, PG 58-28 for the lower layer. The asphalt binder shall be Asphalt Material, PG 58-34 for the upper layer. The asphalt binders shall comply with requirements of Section 455 of the Specifications or AASHTO MP1 “Standard Specification for Performance Asphalt Binder”. If a change to the Asphalt Material grade is required to meet performance specifications, the Contractor shall only proceed with the written approval of the Owner.

If included in the contract, Asphaltic Material for injecting pulverized pavement is a separate pay item and is so noted in the pertinent special provision.

**9. Asphalt Mixing Plant**

The Contractor shall use an acceptable mixing plant, paving equipment, rollers, and other items meeting all of the requirements of the Specifications as set forth in Section 450.

The Contractor shall indicate to the Owner in the table below the plant or plants to be used to produce asphalt mix for this project. Any proposed change in the plants or aggregate sources to be used by the Contractor must not cost any more than the unit price in the Bid and be beneficial to the Owner including consideration of the percentage of AC required in the mix design.

<u>NAME OF PLANT SITE</u>	<u>FOR COUNTY HIGHWAY:</u>
_____	_____
_____	_____
_____	_____

## 10. Job-Mixture Design

The Contractor shall submit the job-mixture design and (2) 5000 gram samples to the Owner at least two weeks prior to use of the material in the work, as per Section 460.2.7 of the Specifications. The Owner will verify the job-mix design meets the requirements of the specifications. The Contractor shall proceed only upon written approval of the owner. Owner verification testing may include a disk-shaped compact tension test (DCT) with a target value for acceptance of a minimum of 400 J/m<sup>2</sup>.

If used in the mixture design, gradation +of any Recycled Asphalt Shingles (RAS) shall meet the following:

100% passing the 3/8" sieve, 95% passing the #4 sieve and processed to remove deleterious material.

The Contractor shall include source information and a gradation analysis with the mixture design documentation for any RAS to be used in the material.

The Contractor shall perform a Hamburg test on mixes to be used for the project to determine the rutting and stripping values prior to placing the mix on the project. The Hamburg test shall be performed as per AASHTO T324 and the latest version of the Wisconsin Manual of Test Procedures (MOTP) with the Wisconsin Test Modified (WTM) AASHTO T324 (WTM T324). The results shall be calculated using the WisDOT "Hamburg Wheel Tracking Test Data Analysis Spreadsheet".

The target value for acceptance of an LT mix is a Stripping Number (LC<sub>SN</sub>) greater than or equal to 3,000 passes and a Corrected Rut Depth @ 20,000 (mm) passes less than or equal to 12.0 mm.

Results of the rutting and stripping tests shall be submitted to Dodge County prior to paving on a project.

## 11. Tack Coat, Item 455.0605

The tack coat, if included in the contract, shall be MS-2, SS-1, SS-1h, CSS-1, or CSS-1h.

The quantity of tack coat is estimated at an application rate of 50-50 diluted emulsion at 0.065 gallons per square yard and shall be placed between all courses of the asphaltic mixture, over an existing pavement or milled pavement prior to placing leveling layers or upper layers to prevent slippage.

**12. HMA Pavement, 3 LT 58-28 S, Item 460.5223; 4 LT 58-34 S, Item 460.5244; 5 LT 58-34 S, Item 460.5245**

HMA Pavement required for this contract shall be HMA Pavement, 3 LT 58-28 S for lower layers and HMA Pavement 4 LT 58-34 S or 5 LT 58-34 S for upper layers as stated in the Bid.

The requirements of Subsection 450.3.2.11 regarding installation of a Safety Edge are hereby deleted.

Spreading and Finishing - Subsection 450.3.2.5 is revised as follows: The Contractor shall provide a transfer machine between the trucks and the pavers during the laying of both the lower layer and the upper layer on all projects. The transfer machine shall be of sufficient size that it can supply a constant flow of material to the pavers and eliminate trucks bumping the pavers. The transfer machine shall be propelled under its own power and shall not be mechanically connected to the pavers. A transfer machine does not have to be used on intersecting roads if the length of centerline is less than 500 feet or for wedging and patches.

Paving Machines - The paving machines shall be equipped with a paving ski and automatic slope controls to be used on both lower layers and upper layers. The ski shall be a minimum of 50 feet in length. The sensor for the automatics shall be run off a taut cable stretched between the ends of the ski with no intermediate contact with the ski. Alternate configurations may be allowed with the approval of the Owner.

Load Tickets - All tickets for a day's production must be consecutive for each project and if loads charged to a project are sent to another project, they must be so documented. The tickets must be provided to the Owner the day following incorporation into the project, unless other provisions are made.

Intersections - Unless otherwise noted, all Town road intersections shall be paved with 2.25" of lower layer prior to placing the upper layer on the mainline past any intersection. After the upper layer has been completed on the mainline past an intersection, the 1.75" of upper layer can be laid on the intersection. The HMA Pavement placed in the intersections shall be the same type used on the mainline. The Contractor shall complete all necessary preparation work to install this intersection paving including, but not limited to, removal and/or disposal of all existing asphalt, grading as necessary, and compacting underlying materials. The cost of this preparation work shall be incidental to other items in the Bid.

Manholes – All manhole adjustments to be completed by Owner during construction.

Incentive IRI Ride Testing shall be completed within 48 hours of placing the surface layer of asphalt.

**13. Asphaltic Surface Driveways and Field Entrances**

This item of work is for the repaving to a match point of any existing driveway with asphalt pavement. The match point shall be designated by the Engineer and the location shall be saw cut full depth by Owner. The Contractor shall remove and dispose of existing asphalt pavement to the match point. The Contractor shall grade the driveway area from the mainline to the match point to accept the same type of pavement and thickness used on the mainline.

The Contractor shall grade the driveway area with pulverized material as necessary. If not enough pulverized material is available from the mainline, Owner shall supply Base Aggregate Dense 1¼-inch to be used by Contractor's grading crew. Placement, leveling, grading and compaction are the Contractor's responsibility. Payment shall be made for the area as measured from the edge of mainline paving as shown on the Proposed Typical Sections to the match point.

**14. Shouldering**

No item of shouldering is included in the bid. The Owner shall complete shoulder repairs or replacements upon completion of paving by the Contractor. However, the Contractor shall manipulate the existing shoulder to maintain passable shoulders at all times and maintain drainage off the existing pavement at low points, especially on milled pavements. This work shall be incidental to other items in the Bid.

**15. Saw Cutting**

The Owner shall complete all saw cutting at match points of the project limits, side roads and driveways.

**16. Basis of Payment**

The actual sum to be paid shall be the aggregate total determined by the work actually performed by the Contractor calculated upon the unit prices set out in the contract.

**17. Paving in Echelon**

Echelon paving shall be completed on all mainline paving in this contract. Pavers shall be staged such that the transfer machine shall service both pavers. Echelon paving shall be completed on both lower and upper layers. Echelon paving is not required on any side road paving.

**18. Incidental Grading**

The roads in the Work may contain areas where curb and gutter have been installed, typically at sideroad intersections or in front of homesites.

In these areas, the Contractor shall grade excess pulverized materials upstation or downstation so that the finished paving matches the typical section in the plans and the flag elevation of the concrete gutter.

This grading of excess materials shall be considered incidental to other bid items.

Grading at match points of project limits, side roads, bridges and driveways shall also be considered incidental.

## 19. **Superelevation Grade Adjustment**

To adjust to the current standard superelevations, not steepen existing sideslopes or create an undesirable raise in grade, imported material may be required or excess material may need to be loaded and trucked out or relocated to other locations within the project limits. The Owner shall supply and place all necessary imported material to correct the curves. This material shall be virgin Base Aggregate Dense 3/4-inch. The Owner shall provide labor and equipment to load and truck the excess material as needed. The Contractor shall coordinate with the Owner on this work. **All work for superelevations grade adjustments not specifically stated here as being supplied by Owner shall be considered incidental to the Pulverize and Relay item of the bid.**

Staking of superelevations shall be completed by Owner.

## 20. **Concrete Curb & Gutter, 6-Inch Sloped 36-Inch Type D; 30-Inch Type D**

The Owner shall remove all existing curb & gutter and complete any excavation by removing and replacing soft or unsuitable material with suitable material. Compact thoroughly and grade the foundation or material underlying the proposed curb and gutter and adjacent tapers to a firm surface. Engineer shall establish and stake finish grade line for all Curb & Gutter. Final grading and compaction shall be completed by the Contractor prior to placing Concrete Curb & Gutter and shall be considered incidental to other bid items. Backfilling and restoration to be completed by the Owner.

## 21. **Removing Asphaltic Surface Milling**

Milled material removed from CTH H, CTH KK, and CTH G shall become property of the Owner. The Owner will provide trucking to remove this milled material from the site.

Milled material removed from CTH P and CTH N shall become property of the Contractor. The Contractor will provide trucking to remove this milled material from the site.

## 22. **Pulverize, Inject, and Relay Existing Pavement, Item SPV.0180; Item SPV.0195**

### A Description

This work consists of pulverizing the existing HMA pavement to the width and depth specified on the plans. The processed material shall be blended, in-place, with a foamed asphalt stabilizing agent, water, and other additives as necessary for placement and compaction of this mixture in accordance with the plans and specifications.

### B Materials

#### B.1 Pulverized Material

Pulverize the full depth of the existing asphaltic pavement and the existing base to a depth the plans show until 97 percent or more will pass the 2-inch sieve. The pulverized material shall maintain a constant ratio of reclaimed asphalt pavement to granular base material. The pulverized material shall be free of contamination of vegetation, topsoil, silt, clay, or other deleterious materials. Remove rubberized crack filler, pavement markers, loop wires, fabric, or other materials as observed from the roadway during the

recycling process. Any residual materials shall be appropriately sized and homogeneously blended with the RAP.

## B.2 Stabilizing Agent

The stabilizing agent shall be foamed asphalt PG 52-34 or PG 46-34.

### B.2.1 Foamed Asphalt

Produce foamed asphalt with a performance graded asphalt binder; without polymer modification; in accordance with Standard Specification 455. Asphalt binder performance grade for foamed asphalt shall be PG 52-34 or PG 46-34. Heat the asphalt binder efficiently to meet the mix design expansion and half-life criteria; min temp for foaming 290° F not to exceed 375° F. Asphalt binder shall produce asphalt foam with a minimum expansion ratio of 8 and half-life of no less than 6 seconds.

### B.2.2 Water

Water added to the pulverized material, used for foaming asphalt, or incorporated with the asphalt emulsion and/or additives shall meet the requirements of Standard Specification 501.2.4.

## B.3 Mixture Design

Unless stated otherwise in the contract documents do not perform a mix design process for Foamed Asphalt. Use an application rate of 3% by mass of the stabilized layer as a starting point and vary the application rate by +/- 0.5% in the field as required to fit the ratio of RAP to CABC in the pulverized material.

## B.4. Compaction

### B.4.1 Compaction Requirements

On the first day of production, construct a control strip to identify the target wet density for the injected layer. The control strip construction and density testing will occur under the direct observation and/or assistance of the department QV personnel.

Unless the Engineer approves otherwise, construct control strips to a minimum dimension of 500 feet long and one full lane width.

Completed control strips may remain in-place to be incorporated into the final roadway cross-section.

Construct additional control strips, at a minimum, when:

There is a significant change in mix proportions, weather conditions, or other controlling factors, the Engineer may require construction of test strips to check target density.

Construct control strips using equipment and methods representative of the operations to be used for constructing the injected layer.

After compacting the control strip with a minimum of 2 passes, mark and take density measurements at 3 random locations, at least 1 ½ feet from the edge of the injected layer. Subsequent density measurements will be taken at the same 3 locations.

After each subsequent pass of compaction equipment over the entirety of the control strip, take density measurements at the 3 marked locations. Continue compacting and testing

until the increase in density measurements is less than 2.0 lb/ft<sup>3</sup>, or the density measurements begin to decrease.

Upon completion of control strip compaction, take 10 randomly located density measurements within the limits of the control strip, at least 1 ½ feet from the edge of the base. The final measurements recorded at the 3 locations under article paragraph (6) of this section may be included as 3 of the 10 measurements. Average the 10 measurements to obtain the control strip target density.

#### B.4.2 Compaction Requirements

Compact the injected layer to a required density of 93% of the target density.

Perform initial rolling with a pads foot roller. Perform final rolling using steel wheel rollers, either in static or vibratory mode.

### C Construction

#### C.1 General

Inject foamed asphalt to the uppermost 4 inches of pulverized asphalt by a method approved by the engineer. Unless the contract provides otherwise, keep the road open to all traffic during construction. Perform injection operations; only between the dates of April 1 and November 1; when the air temperature approximately 3 feet above grade, in shade, and away from artificial heat sources is above 50°F. Do not perform stabilization operations if freezing temperatures are forecast by the National Weather Service within 48 hours after placement. Do not perform injection operations during inclement weather; such as rain or fog; that will not allow proper mixing, placing, and/or compacting of the mixture. Injection operations and recycled pavement curing shall be completed to allow adequate time for placement of surfacing in accordance with calendar requirements of Standard Specification section 450.3.2.1.

#### C.2 Equipment

Equipment used for injection is subject to approval by the engineer. Tankers supplying hot stabilizing agent components shall be equipped to constantly monitor temperature within the tank.

##### C.2.1 Reclaiming Machine

Reclamation units must be capable of uniformly pulverizing the existing pavement and the underlying base layer full lane width to the depth and gradation shown on the plans, specified in the contract, or directed by the engineer, in a single pass. The units shall be equipped with automatic depth control, capable of maintaining constant cutting depth and width, uniform grade, and uniform slope. The units must be able to thoroughly mix the pulverized material while injecting and automatically metering the stabilizing agent. The unit must provide means for automatically cleaning nozzles and continual observation and measurement by the operator. If using foamed asphalt stabilizing agent, the unit must be able to accurately foam the asphalt and uniformly add the specified water; and have a means of providing foamed asphalt samples through a sampling nozzle. Use of a heating device to soften the pavement is not permitted.

##### C.2.4 Motor Grader

Use a self-propelled motor grader with a minimum 12 feet wide blade. The motor grader must have a cross slope indicator.

### C.2.5 Compaction Equipment

Compaction equipment shall be self-propelled and meet the requirements of Standard Specification 450.3.1.5. Pneumatic-tired, vibratory padsfoot, and double drum steel-wheeled rollers shall be used as necessary to achieve the specified compaction.

### C.3.1 Preparation and Pulverization

Prior to commencing injection operations, remove from the roadway any vegetation, standing water, combustible materials, oils, loose crack filler, and any other deleterious materials. Pulverize and relay the in-place asphaltic surface and portion of the underlying base to the depth specified in the contract, or by the engineer; and in accordance with Standard Specification 325; Pulverized and Re-laid Pavement.

### C.3.2 Injecting and Mixing

Longitudinal joints between successive injection passes must be overlapped a minimum of 6 inches. Transverse joints between successive injection passes shall be overlapped a minimum of 2 feet.

### C.3 Shaping and Compaction

Complete initial, padfoot roller, compaction prior to shaping. Spread and shape the stabilized material to achieve the plan cross-slope and remove padfoot roller marks.

### C.4 Surface Requirements

Test the pavement surface at regular intervals, and engineer selected locations, using a 10-foot straightedge or other engineer specified device. The engineer may direct the repair of surface deviations greater than 1/4 inch between two surface contact points. High points shall be corrected by reworking, rerolling, trimming, milling, or grinding. Depressions may have a tack coat applied and be filled with HMA immediately prior to surfacing.

### C.5 Maintaining the Work

After compaction is complete, the contractor will determine when the injected surface is stable to open to traffic. After opening to traffic, and prior to placing a surface treatment, the surface of the reclaimed pavement shall be maintained in a condition suitable for safe movement of traffic. The reclaimed pavement surface shall be protected and maintained from standing water, deleterious substances, and/or other damage.

### C.9 Curing and Surfacing

#### C.9.1 Curing

Application of a surface treatment will not be allowed until a minimum of 3 calendar days after completion of injection and mixing operations and when the moisture content is at least 1.0 percentage points below the design optimum or below 3.0 percentage points, whichever is lower.

#### C.9.2 Tack Coat

The surface shall be prepared and tack coat applied meeting the requirements of Standard Specification section 455.3.2. Minimum tack coat application rate shall be 0.05 gal/SY. A hot asphalt cement tack coat shall not be used.

#### C.9.3 Surfacing

Surfacing materials, equipment, and construction methods shall be in accordance with the applicable sections of the Standard Specifications or contract special provisions.

#### D Measurement

The department will measure the Asphalt Stabilizing Agent incorporated into the work by the ton; as metered through a calibrated pump, or through delivered ticket quantity. The department will measure the Pulverize, Inject, and Relay Existing Pavement bid item as acceptably completed by the Square Yard (SY).

#### E Payment

The department will pay for the measured quantities at the contract unit price under the following bid items:

ITEM NUMBER	DESCRIPTION	UNIT
SPV.0180	Pulverize, Inject, and Relay Existing Pavement	SY
SPV.0195	Asphalt Stabilizing Agent (Foamed Asphalt)	TON

Payment for asphalt stabilizing agent is full compensation for furnishing all labor, tools, equipment, and materials necessary for furnishing and testing the stabilizing agent.

Payment for Pulverize, Inject, and Relay Existing Pavement is full compensation for preparation, pulverizing and relaying the existing asphaltic surface and underlying base material, for injecting, mixing, spreading, compacting, testing including producing mix designs, furnishing all labor, tools, equipment, and materials necessary to complete the contract work.

Payment also includes QMP base compaction testing and water for compaction and dust control except, if the contract contains the QMP Pulverize and Relay and/or water bid items, the department will pay separately for compaction testing and compaction dust control water as specified in the applicable provisions.