

# Torch Lake Campground Improvements

Vilas County Parks and Recreation Department

**DRAFT**

**TORCH LAKE  
CAMPGROUND IMPROVEMENTS**

**PROJECT #27-1027**

**BID DUE DATE: February xx, 2016**



Prepared by:

**AYRES  
ASSOCIATES**

**Ayres Associates.**  
101 East Badger Road  
Madison, Wisconsin 53713  
PH: (608) 255-0800  
FAX: (608) 255-7750



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Town of Conover, WI

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**ADVERTISEMENT FOR BIDS**  
**NOTICE TO CONTRACTORS**

Vilas County Park and Recreation Department  
Dale Mayo, Parks Manager  
330 Court Street  
Eagle River, WI 54521

Sealed bids will be received by the Vilas County Park and Recreation Dept. at the address listed above, until **2:00 PM CST, Tuesday, February xxth, 2016**, for furnishing all labor & materials necessary for the construction of:

**Project #27-1015**  
**Torch Lake**  
**Campground Improvements**

all in accordance with specifications by Ayres Associates. The project includes, but is not limited to, excavation of existing site materials, tree clearing, site grading, dump station construction, water line construction, septic field construction, electrical systems, crushed aggregate base course, concrete pavement, asphaltic paving, campsite construction, and erosion control and site restoration. Bids will be publicly opened and read aloud immediately after **2:00 PM**. Each bid must contain the full name of every person or company interested in the same and must be accompanied by a contract and bid bond, a certified check, or a bank cashier's check, in the sum of five per cent (5%) of the bid, payable to the Vilas County Park and Recreation Department as a guarantee that if the bid is accepted, a contract will be entered into and its performance properly secured within fifteen (15) days of the award of contract. Should any bid be rejected, such check will be forthwith returned to the bidder, and should any bid be accepted, such check will be returned upon the timely and proper execution and securing of the contract. In case the successful bidder shall fail to execute the contract and performance bond, the amount of the bid bond or check shall be forfeited to Vilas County as liquidated damages.

Plans and specifications are available to examine and obtain from the office of:

Ayres Associates  
101 E. Badger Road  
Madison, WI 53713  
Ph (608)255-0800

Vilas County Park and Recreation Dept. (Examination only)  
330 Court Street  
Eagle River, WI 54521  
Ph (715)479-5160

A **NON REFUNDABLE DEPOSIT (CASH OR CHECK ONLY)** paid to Ayres Associates, of Twenty Dollars (\$20.00) is required to obtain a copy of plans and specifications. (Paper and digital PDF on a CD)

Any contractor desiring plans and specifications **BY MAIL** shall submit, in addition, \$10.00 covering handling and mailing charges (\$30 total). This money is non-refundable. (Paper and digital PDF on a CD)

The successful bidder shall be required to furnish Worker's Compensation and Liability Insurance as enumerated in the specifications.

In the event that Section 66.0903 of the Wisconsin Statutes, applies, on the work here bid upon, the Contractor shall pay to each of his/her workers the wage prevailing in Vilas County at the time the contract is entered into and as listed and filed in the office of the Parks Manager. A copy of such wage rates will be incorporated in the contract documents.

Vilas County reserves the right to reject any or all bids, or to accept any bid considered the most advantageous.

**Publish: February xx and March xx, 2016**

**INSTRUCTIONS TO BIDDERS**  
Torch Lake Campground Improvements  
TOWN OF CONNOVER, WISCONSIN

Bids will be received by the Vilas County Parks and Forestry Department (herein after called the OWNER) at 330 Court Street, Eagle River, WI, until 2:00 p.m., Tuesday, February xx, 2016, for construction of the proposed project, at which time and place all bids will be publicly opened and read aloud. Bids shall be addressed to the Vilas County Parks and Forestry Dept. at the address listed above, and shall be marked "Sealed Bid – Torch Lake Campground Improvements."

Bidders are requested to submit their bids in accordance with the following conditions:

**DEFINED TERMS**

Terms used in these documents are defined in Article 1 of the General Conditions.

**SPECIFICATIONS AND CONTRACT DOCUMENTS**

Specifications and contract documents are available at the office of Ayres Associates, 101 East Badger Road, Madison, WI 53713 and the County Parks and Forestry office, 330 Court Street, Eagle River, WI 54521. A non-refundable fee of \$20 will be required. An additional \$10 is required to cover shipping and handling requests to have specifications and contract documents mailed. Requests for overnight mailing of specifications and contract documents will not be accepted. Extra sets of specifications and contract documents are available at an additional cost of \$20 per set.

Complete sets of specifications and contract documents should be used when preparing bids. The OWNER is not responsible for errors or misinterpretations caused by preparing bids from incomplete sets of specifications and contract documents. Specification and contract documents are meant for bidding purposes only and shall not be used for any other purpose.

**QUALIFICATIONS OF BIDDERS**

Bidders must be able to, within five days of the OWNER's request, provide financial data, prior experience, current projects, and any other information required to show that the bidder is qualified to do work in the State of Wisconsin.

**SITE CONDITIONS**

It is the responsibility of the bidder to examine the existing site conditions and determine how they may affect cost and progress of the work. At the bidder's request, the OWNER will make available copies of all drawings and reports used in preparing these specifications and contract documents. This information may include but is not limited to soils reports, underground utility surveys, hazardous material reports and other such studies that were necessary to satisfy the conditions of the project.

At the request of the bidder, the OWNER will make the site available for the Bidder to conduct their own investigations. Failure on the part of any bidder to make such examinations and to investigate the premises shall not be grounds for any declaration that the Bidder did not understand project conditions.

Easements and property needed for construction of the project has been obtained by the OWNER.

Any additional lands required by the Contractor for temporary access or storage of materials and equipment shall be obtained and paid for by the Contractor.

### ADDENDA AND INTERPRETATIONS

Oral interpretation of the meaning of plans, specifications or other contract documents made to any bidder will not be binding. Every request for such interpretation must be in writing, addressed to Ayres Associates, 101 East Badger Road, Madison, WI, 53713. To be given consideration, such request must be received at least seven (7) days prior to the date fixed for opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written Addenda which, if issued, will be available digitally to all prospective bidders at the respective addresses furnished by each bidder for such purpose, not later than three (3) days prior to the date fixed for opening of bids. All Addenda so issued shall become part of the Contract Documents.

### SUBCONTRACTORS

If requested by the OWNER, the apparent low Bidder shall provide a list of suppliers and subcontractors and the portion of the work for which they will be responsible for, prior to the execution of the Agreement. If the OWNER has reasonable objection to any of the suppliers or subcontractors, before the Notice of Award is given, Owner may request that the apparent low Bidder provide an acceptable replacement without an increase in the Bid. Failure to make such a replacement will be grounds for the OWNER to award the Contract to the next lowest Bidder with acceptable suppliers and subcontractors. Declining to make requested replacements will not constitute grounds for forfeiting of the Bid security of any Bidder. The Contractor shall not be required to use a supplier or subcontractor to which the Contractor has reasonable objection.

### WAGE RATES

The State wage rate determination is included as part of the specifications and contract documents and will be on file at the office of the OWNER. The bidder shall be responsible for understanding these wage rates and incorporating them and their requirements into the bid.

### TAXES

Bids shall include all applicable taxes in effect at the time of the Bid. Bidders who are uncertain as to what items are subject to tax, or who require further explanation, are requested to contact the State of Wisconsin Department of Revenue.

All Bidders that are not residents of the state of Wisconsin shall comply with Section 71.80 (16) of the Wisconsin Statutes.

### LAWS, ORDINANCES, AND REGULATIONS

The Bidder is responsible for being familiar with all laws, ordinances, and regulations of federal, state, city, and other governmental agencies. Bidders are responsible to secure and pay fees associated with any necessary permits to complete the work that have not been secured by the OWNER.

### BIDS

All bids are to be made on the forms herein provided and completed in ink or by a typewriter.

Prices are to be stated in writing and also by the use of figures. In case of conflict of stated prices, written prices shall apply. Only bids which are made out on the original forms attached hereto will be considered. Bid forms must not be separated from the specifications.

Bidders shall examine the plans, specifications, and the locality in which the said work is to be done and judge for themselves all the circumstances and surrounding conditions affecting the cost and nature of the work. Failure on the part of any bidder to make such examination and to investigate the premises shall not be grounds for any declaration that bidder did not understand the conditions of this bid.

#### DELIVERY OF BIDS

Each bid shall be placed in an opaque sealed envelope. Envelopes shall be addressed to OWNER at the location indicated above, and are to be marked as shown in the Advertisement for Bids. Bids will be received until the hour and date set for the opening thereof and must be by that time in the hands of the OWNER at the required location. Bids shall contain signed and completed original bid documents and the required bid security.

#### WITHDRAWAL OF BIDS

A bidder may withdraw his bid, providing the request, in writing, is in the hands of the OWNER by the time set for the opening of bids. When such a bid is reached, it will be returned unopened to the bidder. No bids shall be withdrawn after the opening of bids for a period of 60 days after scheduled time of closing bids without consent of the OWNER.

#### REJECTION OF BIDS

The OWNER reserves the right to reject any or all bids or to waive any technicality and accept any bid which may be deemed to be in the best interests of the OWNER.

#### BASIS ON WHICH BIDS ARE REQUESTED

Bids are requested on the basis of unit and lump sum prices, including prices on alternate bid items, which are clearly set forth in the Proposal and Specifications.

#### BASIS ON WHICH BIDS WILL BE EVALUATED

Bids will be evaluated on costs provided with weighted discretion on quality of past performance.

#### BID GUARANTEES

No proposal will be considered unless accompanied by a bid deposit in the amount stated in the Advertisement in the form of a Bid Bond, Certified Check or Bank Draft. All forms of bid guarantee shall be made payable to the OWNER.

#### BIDDERS RESPONSIBILITY

Bidders are required to inform themselves of conditions under which the work is to be performed and all other relevant matters concerning the work to be performed.

#### INTERPRETATION OF CONTRACT DOCUMENTS

If the prospective bidder is in doubt as to the true meaning of any part of the specifications or other proposed contract document, he may submit to OWNER and ENGINEER a written request for an interpretation thereof. Any interpretation of the proposed documents will be made only by an addendum duly issued.

#### REQUIREMENTS FOR SIGNING BIDS

Bids which are not signed by individuals making them shall have attached thereto a power of attorney with authority to sign the bid in the name of the person for whom it is signed.

Bids which are signed for a partnership shall be signed by all of the partners or by an attorney-in-fact. If signed by an attorney-in-fact, there shall be attached to the bid a power of attorney extending authority to sign the bid, executed by the partners.

Bids signed for a corporation shall have the correct corporate name thereon and the signature of the president or authorized officer of the corporation manually written below the corporate name, following the word "By\_\_". Any bid manually signed by an official other than the president of the corporation shall have attached to it a certified copy of a resolution of the Board of Directors directing authority of such official to sign the bid. Such bid shall also bear the attesting signature of the secretary of the corporation and the impression of the corporate seal.

#### AWARD OF CONTRACT

Before award of any contract can be approved, the OWNER shall be satisfied that the bidder involved:

1. Maintains a permanent place of business.
2. Has adequate plant equipment to do the work properly and expeditiously.
3. Has a suitable financial status to meet obligations incident to the work.
4. Has appropriate technical experience.
5. Can submit a satisfactory performance record.

The award, if made, will be made to a responsible bidder as recommended by the ENGINEER, subject to the decision of the OWNER.

#### WHEN AWARD EFFECTUAL

The Contract shall be deemed as having been awarded when formal notice of award has been duly served upon the awardee (i.e., the bidder to whom the OWNER intends awarding the contract) by an officer or agent of the OWNER duly authorized to give such notice.

#### NUMBER OF COPIES OF DOCUMENTS

There will be required three (3) executed counterparts of the Contract Documents, Performance Bond, and Payment Bond.

#### BONDS

The successful bidder will be required to execute a Performance Bond and a Payment Bond, the

penalty of which shall not be less than the contract price, on the form attached, with good and sufficient sureties satisfactory to the OWNER. The penal sum of Performance Bond and the Payment Bond for any contract will be determined by the total base bid as stated in the Bid and Contract.

1. The forms of Performance Bond and Payment Bond attached hereto shall be used.
2. The forms contemplate one corporate surety only. In case co-sureties or individual sureties will be furnished, proper forms therefore shall be obtained at the office of Ayres Associates.
3. Every bond must run to the OWNER.
4. The surety on the bonds shall be licensed to underwrite contracts in the State of Wisconsin and a certificate to that effect shall be attached to the bond.
5. If the principal is an individual, his full legal name and residence shall be inserted in the body thereof, and he shall sign the bond with his usual signature on the line opposite the scroll seal.
6. If the principals are partners, their individual names shall appear in the body of the bond, with the recital that they are partners comprising a firm, naming it, and all the members of the firm shall execute the bond as individuals.
7. The signature of a witness shall appear in the appropriate place attesting the signature of each individual party to the bond.
8. If the principal is a corporation, the name of the state in which incorporated shall be inserted in the appropriate place in the body of the bond and said instrument shall be executed and attested under the corporate seal as indicated on the form. If the corporation has no corporate seal, the fact shall be stated, in which case a scroll or adhesive seal shall appear following the corporate name. This also applies to execution by surety.
9. The date of the bond must not be prior to the date of the bid for which it is given.
10. A power of attorney, authorizing execution of the bond by an attorney-in-fact or agent, shall be attached to one executed counterpart of the bond. If the bond is executed by an out-of-state agent, it shall be countersigned by a licensed resident agent of the State of Wisconsin, and evidence of his being so licensed shall be furnished.

### STANDARD SPECIFICATIONS

Where standard specifications are referred to in these specifications, they shall become a part of these specifications as though incorporated herein. The last revision of the standard specifications as of the date of contract shall apply.

### TIME OF COMPLETION

The work on the PROJECT shall be completed within 180 days after the date when the Contract Time commences to run, and ready for final payment within 200 calendar days after the date then the Contract Time commences to run. All reasonable attempts shall be made to complete the project and open to the public on or before August 27, 2016.

### FAILURE TO COMPLETE WORK ON TIME

Should the CONTRACTOR fail to complete the work within the time agreed upon in the contract or within such extra time as may have been allowed by extensions, there shall be deducted from any

moneys due or that may become due CONTRACTOR the sum set forth below for each and every calendar day, including Sundays and holidays, that the work shall remain uncompleted. This sum shall be considered and treated, not as a penalty, but as fixed, agreed upon and liquidated damages due to the OWNER from the CONTRACTOR by reason of inconvenience to the OWNER, added cost of engineering and supervision, maintenance of detours, and other items which have caused an expenditure of OWNER's funds resulting from CONTRACTOR's failure to complete the work within the time specified in the contract:

Amount of Liquidated Damages shall be equal to a daily charge of 0.1% of the amount of the original contract, or \$100 per day, whichever is greater.

This amount shall in no event be considered as a penalty or otherwise than as liquidated and adjusted damages of OWNER because of said delay and may be deducted and retained out of moneys which may become due CONTRACTOR hereunder.

### CONSTRUCTION SCHEDULE

Immediately after execution and delivery of Contract and before first partial payment is made, CONTRACTOR shall coordinate his estimated construction progress schedules and shall assemble and incorporate schedules into a single schedule, which shall be delivered to the ENGINEER.

### NON-DISCRIMINATION IN EMPLOYMENT

The parties agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, national origin, age, sex, height, weight or marital status. Breach of this covenant may be regarded as material breach of this Agreement.

### LIEN WAIVER

Upon satisfactory completion of the work and before final payment is made the CONTRACTOR shall submit to the OWNER a Settlement Certification Form stating that all claims against the Project have been satisfied.

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**BID FORM**  
**TORCH LAKE CAMPGROUND IMPROVEMENTS**  
**TOWN OF CONNOVER, WISCONSIN**

Bids to be received until 2:00 PM CST., **Tuesday, February xx, 2016.**

TO: Vilas County Park and Recreation Department  
 330 Court Street  
 Eagle River, WI 54521

1. The undersigned, having familiarized himself with the Contract Documents including Advertisement for Bids, Instructions to Bidders, Bid, Special Provisions, General Conditions, Form of Contract, Form of Bond, Specifications, Addenda and Exhibits issued and attached to the specifications on file at the Vilas County Park and Recreation Dept., 330 Court Street, Eagle River, WI, 54521, and Ayres Associates, 101 E. Badger Road, Madison Wisconsin, 53713 hereby proposes to furnish all of the labor, materials, necessary tools, expendable equipment and all utility and transportation services necessary to perform and complete, in a workmanlike manner, TORCH LAKE CAMPGROUND IMPROVEMENTS, all in accordance with the plans and specifications as prepared by the Vilas County Park and Recreation Department and Ayres Associates. Including addendas issued thereto, Nos. \_\_\_\_\_.

The following abbreviations may be used in this Bid:

CY - Cubic Yards	LBS - Pounds
DI - Ductile Iron	LF - Lineal Feet
DIA - Diameter	LS - Lump Sum
EA - Each	SF - Square Feet
FT - Feet	STA - Station
GAL - Gallons	SY - Square Yard
IN - Inch	TN - Ton

The Bidder agrees to perform all the work described in the Contract Documents for the following unit prices:

<b>BASE BID</b>					
ITEM NO.	BID DESCRIPTION	CONTRACT QTY.	UNIT	UNIT PRICE	TOTAL PRICE
1	Mobilization	1	LS		
2	Erosion Control	1	LS		
3	Demolition	1	LS		
4	Earthwork	1	LS		
5	Tracking Pad	1	EA		
6	Dense Graded Base Course	x	TN		
7	4" Concrete Pavement	x	SF		
8	6" Concrete Pavement	x	SF		
9	Limestone Screenings Path	x	LF		
10	Medium Rip Rap	x	TN		

11	12" Storm Sewer Culvert	x	LF		
12	2" PE Water Service	x	LF		
13	3/4" PE Water Service	x	LF		
14	6" PVC Sanitary Lateral	x	LF		
15	Electrical Service	1	LS		
16	Camp Site Utility Hookups	1	LS		
17	Modular Vault Toilet	1	EA		
18	Campsite Furnishings	x	EA		
19	Campsite Markers	x	EA		
20	Regulatory Signs	x	EA		
21	Gate	1	EA		
22	Site Restoration	1	LS		
23	Dumpster Enclosure	1	LS		
24	Septic System	1	LS		
25	Dump Station Construction	1	LS		
26	Well	1	EA		

Computed Total Base Bid Contract (Items 1 through 26) \$ \_\_\_\_\_

**Total Base Bid Written**

\_\_\_\_\_

\_\_\_\_\_

Addendums Received \_\_\_\_\_

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Description of requested Alternate Bid Items is as follows:

**Alternate Bid Item #A1: Asphalt Paving**

Bidder shall state total amount to be revised from Base Bid. The Alternate Bid includes the installation of asphaltic pavement on the parking lot, and dump station road as indicated on the plan sheets.

The Bidder agrees to perform all the work described in the Contract Documents for the following unit prices for the proposed alternate bid items:

ALT BID					
ITEM NO.	BID DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
A1	Asphalt Paving	x	TN		
A2	Pavement Marking	X	LS		
A3	Campsite Utility Hookups (Water Deduct)	x	EA		
A4	2" Water Service Laterals (Deduct)	X	LS		
A5	¾" PE Water Service Laterals (Deduct)	X	LF		
A6	Yard Hydrant	1	LS		

Total Base Bid \$ \_\_\_\_\_

Plus Alternate Bid Items (Items A1 to A6) \$ \_\_\_\_\_

Computed Total Bid with Alternate \$ \_\_\_\_\_

**Total Bid with Alternate Written**

\_\_\_\_\_

\_\_\_\_\_

Addendums Received \_\_\_\_\_

2. If awarded a contract, work shall proceed so as to complete the contract within 90 calendar days after notification to proceed.
3. Accompanying this Proposal is \_\_\_\_\_, in  
 Certified Check, Bond, Bank Draft  
 the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_),  
 as required by the Advertisement for Bids.
4. I hereby certify that all statements herein are made on behalf of  
 \_\_\_\_\_

Name & Address of Corporation, Partnership or Person submitting same

a corporation organized and existing under the laws of the State of \_\_\_\_\_; a partnership consisting of \_\_\_\_\_

\_\_\_\_\_; an individual trading

as \_\_\_\_\_, State of \_\_\_\_\_; that I have examined and carefully prepared this Proposal from the plans and specifications and have checked the same in detail before submitting this Proposal; that I have full authority to make such statements and submit this Proposal in (its)(their) behalf; and that the said statements are true and correct.

Signature: \_\_\_\_\_

Sworn & subscribed to before me this  
\_\_\_\_ day of \_\_\_\_\_, 2016

Title (if any): \_\_\_\_\_

Notary Public or other officer  
authorized to administer oaths.

My commission expires

\_\_\_\_\_

NOTE: Bidders should not add any conditions or qualifying statements to the Proposal, as otherwise the Proposal may be declared irregular as being not responsive to the Advertisement.

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not for construction

## SPECIAL PROVISIONS

### **General**

The work under this contract for the construction of the Torch Lake Campground Improvements, Town of Conover, Wisconsin shall be in accordance with the plans. This section contains an explanation of bid items contained in this bid proposal and supersedes the Standard Specifications if conflicts arise. The term "standard specification" in these special provisions refers to the "State of Wisconsin, Department of Transportation, Standard Specifications for Highway and Structure Construction", latest Edition, "The Standard Specifications for Sewer & Water Construction in the State of Wisconsin," Latest Edition, and shall be executed under the requirements of the General Specifications, Standard Specifications, and these special provisions.

### **BASE BID ITEMS**

#### **Item 1 – Mobilization**

The item mobilization shall conform to Section 619 of the Wisconsin standard specifications.

This work shall include the cost of moving in equipment and supplies to the site, the establishment of necessary stockpiles and trailer and moving the same off site. This item also includes any construction staking required by the contractor. The quantity of Mobilization shall be measured and paid for at the contract lump sum price.

#### **Item 2 – Erosion Control**

The item erosion control shall conform to Section 628 of the standard specifications.

This work consists of furnishing, installing, and maintaining silt fence and erosion matting measures at the locations designated on the Plans and where directed by the Project Engineer, removing and disposing of sediment deposits, and removing fence and other measures at the completion of the work. **Item includes Class 1 Urban Type A Erosion Control matting as identified.**

Installation: Silt fence and erosion mat installation, maintenance and removal shall comply with the WDNR Conservation Practice Standards Nos. 1052 & 1056.

Basis of Payment: This work will be paid for at the contract lump sum price. This price shall be full compensation for furnishing all materials, including delivering, installing, maintenance, removal and for all labor, equipment, tools and incidentals necessary to complete this item of work.

#### **Item 3 – Demolition**

This work consists of removing and disposing of miscellaneous items at the locations designated on the Plans and where directed by the Project Engineer. Items include but are not limited to saw cutting, clearing and grubbing, sanitary sewer removal, gravel

## SPECIAL PROVISIONS

removal, and miscellaneous item removals. NOTE: All work must be completed outside of DNR mandated Oak Wilt Season and as stated on plans.

Basis of Payment: This work will be paid for at the contract unit price per lump sum. This price shall be full compensation for furnishing all materials, removal and legal disposal, and for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 4 – Earthwork**

The item earthwork shall conform to Section 201 of the standard specifications.

This work consists of stripping and stockpiling of topsoil, excavating, filling, grading, exporting excavated material, compacting, preparation of sub-grade, disposal of excess materials, temporary drainage, berming, and related earthwork for the project. Work shall be performed in accordance with Part 2 'Earthwork' of the State Specifications. Aggregate base is not included in this Item.

Construction: Excavated soil must be removed and disposed of in a legal manner if not reused on the site per plans.

Method of Measurement: The quantity of this item shall be measured and paid for at the contract lump sum price.

Basis of Payment: This work will be paid for at the contract unit lump sum price for earthwork. Payment is full compensation for furnishing and placing all materials, excavation, exporting, disposal, placing, grading; and for furnishing all labor, tools, equipment, and incidentals necessary to complete the contract work. The cost for the aggregate base is covered under a separate bid item.

### **Item 5 – Tracking Pad**

This work consists of furnishing, installing, and maintaining a tracking pad at the location designated on the Plans and if necessary, where directed, scraping and removing sediment deposits or top dressing, and removing pad at the completion of work.

Construction: Tracking pad installation, maintenance and removal shall comply with the WDNR Conservation Practice Standard No. 1057.

Method of Measurement: Measurement will be per the tracking pad acceptably installed. Payment will be made at the contract unit price each.

Basis of Payment: This item of work will be paid for at the contract unit price per each. This price shall be full compensation for furnishing all materials, including delivery, installation, maintenance, removal, and for all labor, equipment, tools and incidentals necessary to complete this item of work.

## SPECIAL PROVISIONS

### **Item 6 – Dense Graded Base Course**

This item includes all materials and work necessary for the installation of 1¼" crushed aggregate dense graded base course per section 305 of the WDOT Standard Specifications.

Method of Measurement: This item will be measured and paid for by the ton.

Basis of Payment: This item of work will be paid for at the contract unit price per ton. Payment is full compensation for all necessary dense graded base course; for delivering, placing, compacting, proof rolling, and for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 7 – 4" Concrete Pavement**

This item shall conform to Section 501 and 602 of the State Standard Specifications.

This work consists of furnishing and installing concrete pavement including forming, reinforcing, concrete and finishing at locations designated on the Plans in accordance with the standard specifications. Note that aggregate base is not included as part of this bid item. Aggregate base will be paid under Item 7.

Construction: The item concrete pavement shall conform to Section 602 of the standard specifications. Typical light broom finish.

Method of Measurement: Measurement for this item of work will be measured in-place, acceptably completed per square foot.

Basis of Payment: This item of work will be paid for at the contract unit price per square foot. Payment is full compensation for furnishing all materials, including delivering, forming, installing, reinforcing, concrete, placing, finishing and jointing and for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 8 – 6" Concrete Pavement**

This item shall conform to Section 501 and 602 of the State Standard Specifications.

This work consists of furnishing and installing concrete pavement including forming, reinforcing, concrete and finishing at locations designated on the Plans in accordance with the standard specifications. Note that aggregate base is not included as part of this bid item. Aggregate base will be paid under Item 6.

Construction: The item concrete pavement shall conform to Section 602 of the standard specifications. Typical light broom finish.

## SPECIAL PROVISIONS

Method of Measurement: Measurement for this item of work will be measured in-place, acceptably completed per square foot.

Basis of Payment: This item of work will be paid for at the contract unit price per square foot. Payment is full compensation for furnishing all materials, including delivering, forming, installing, reinforcing, concrete, placing, finishing and jointing and for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 9 – Limestone Screenings Path**

This item includes all materials and work necessary for the installation of limestone screenings trail surface course per the specifications listed below.

Limestone screenings shall be composed of clean, hard durable particles of natural screenings resulting from the crushing of rock, stone or gravel and shall be free of clay, silt or other objectionable material generally conforming to the standards of section 310 of the WDOT Standards Specifications.

Material shall meet the following gradation requirements as noted below.

#### **PERCENTAGE PASSING BY DRY WEIGHT**

<u>SIEVE SIZE</u>	<u>% PASSING</u>	<u>ALLOWABLE LIMITS %</u>
3/8 in	100.0	100
No 4	99.8	50-100
No 10	48.3	20-55
No 40	22.5	10-30
No 200	7.0	0-12

Strip all topsoil and sod to a depth and to a width as indicated on the drawings. Screening area shall have clearly defined smooth edges and limestone shall not contaminate adjacent sodded areas.

Contractor shall compact base course to 98% Standard Proctor Density.

Place limestone screenings to a uniform depth as indicated on the drawings and compact to 98% Standard Proctor Density.

Method of Measurement: This item will be measured and paid for by the ton. Contractor to provide tickets to Engineer for all material delivered to site.

Basis of Payment: This item of work will be paid for at the contract unit price per ton. Payment is full compensation for all necessary limestone screenings; for delivering, placing, compacting, proof rolling, and for all labor, equipment, tools and incidentals necessary to complete this item of work.

## SPECIAL PROVISIONS

### **Item 10 – Medium Rip Rap**

The item is for the supply and installation of rip rap with fabric at all apron end walls and shall conform to Section 606 of the standard specifications.

This work consists of furnishing, excavating, installing, placing geotextile fabric type HR and finishing at the proposed end wall locations designated on the Plans.

Method of Measurement: This item shall be measured and paid by the square yard for acceptably completed work, as measured in the field.

Basis of Payment: This item shall be paid for at the contract unit price per square yard, acceptably installed, as measured in the field. Payment is full compensation for furnishing all materials, including geotextile fabric type HR, delivering, excavating, and finishing as well as for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 11 – 12” Storm Sewer Culvert**

The item is for the supply and installation of 12” diameter storm sewer and shall conform to Section 607 of the standard specifications.

This work consists of furnishing, excavating, installing, and backfilling PVC or HDPE pipe at the locations designated on the Plans. This item also includes modification and connection to existing storm structures. Deflection testing shall be performed by the CONTRACTOR for all PVC and HDPE installations. The deflection test shall be performed using a rigid ball or mandrel, and shall be performed without mechanical pulling devices. If deflection testing occurs within 30 days of placement of the final backfill, deflection may not exceed 5%. Maximum deflection may not exceed 7.5% when testing occurs more than 30 days after placement of the final backfill.

Method of Measurement: This item shall be measured and paid by the linear foot for acceptably completed work, as measured in the field.

Basis of Payment: This item shall be paid for at the contract unit price per linear foot acceptably installed, as measured in the field. Payment is full compensation for furnishing all materials, including delivering, excavating, shoring, laying pipe, sealing joints, connecting, providing granular backfill and bedding, backfilling, and cleaning and for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 12 – 2” PE Water Service**

This item includes the installation of 2” HDPE water service lateral, valves, valve boxes, and permanent connection to the new well service. This item includes all fittings, labor, and materials required. Granular backfill under paved surfaces is required. Work under this item shall conform to the latest edition of the Standard Specifications.

## SPECIAL PROVISIONS

Method of Measurement: The quantity this item shall be measured and paid for at the contract linear foot price.

Basis of Payment: This item shall be paid for at the contract unit price per linear foot acceptably installed, as measured in the field. Payment is full compensation for furnishing, installing, providing granular backfill, cover, bedding, connections, testing, and placing for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 13 – 3/4” PE Water Service Laterals**

This item includes the installation of 3/4” HDPE/PVC water service lateral, valves, valve boxes, and connection to the 2” main line. This item includes all fittings, labor, and materials required. Granular backfill under paved surfaces is required. Work under this item shall conform to the latest edition of the Standard Specifications.

Method of Measurement: The quantity this item shall be measured and paid for at the contract linear foot price.

Basis of Payment: This item shall be paid for at the contract unit price per linear foot acceptably installed, as measured in the field. Payment is full compensation for furnishing, installing, providing granular backfill, cover, bedding, connections, testing, and placing for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 14 – 6” PVC Sanitary Lateral**

This item includes the installation of 6” sanitary sewer lateral and permanent connection to the existing septic system. This item includes all fittings, labor, and materials required. Granular backfill under paved surfaces is required. Work under this item shall conform to the latest edition of the Standard Specifications.

Method of Measurement: The quantity this item shall be measured and paid for at the contract linear foot price.

Basis of Payment: This item shall be paid for at the contract unit price per linear foot acceptably installed, as measured in the field. Payment is full compensation for furnishing, installing, providing granular backfill, cover, and bedding, connections, testing, and placing for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 15 – Electrical Service**

This item includes any cost for installation of new electrical service to the restroom building, well, and host site. Note that all support equipment, materials, and labor should be considered incidental to this item.

## SPECIAL PROVISIONS

Construction: The electrical work shall be performed as detailed below, and as shown on the plans.

All service shall be fed from the existing utility cabinet (shown on the plans). Contractor shall coordinate electrical conductor and raceway requirements from existing utility cabinet to service entrance with the local utility prior to bid and all costs shall be included.

### Miscellaneous Electrical Items

- All electrical components used shall be UL listed and be in new condition.
- All electrical connections made within poles or underground shall be performed using weather-resistant, set-screw type fittings.
- All conduit shall be PVC Sch. 40, size as required and as detailed in the NEC.
- All conductors used underground shall be XHHW-2 type wire, all conductors above ground shall be THHN or THWN as required.

Method of Measurement: This item shall be measured on a lump sum basis, completed and fully operational in accordance with all local, state and federal codes, laws and regulations. Contractor must provide detailed plan and cut sheets to the engineer and/or Dodge County for review.

Basis of Payment: This item of work will be paid for at the contract lump sum price. Payment is full compensation for furnishing all materials, including delivering, installing, wiring, conduit, placing and testing and for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 16 – Camp Site Utility Hookups**

This item includes all materials and work necessary for furnishing and installation of the host site utility hookups, including electrical pedestal, wiring, hose bibb, post, and all fittings, labor, and materials required. Work under this item shall conform to the latest edition of the Standard Specifications.

#### Materials:

- Hose Bibb shall be a frost-free, anti-siphon commercial threaded type.
- 4"x4" brown-treated wood post.
- Electrical pedestal shall be General Electric GE1LU032ES, installed according to manufacturer specifications.

Construction: Install hookups on concrete pad per detailed plans and in accordance with the manufacturer's recommendations.

## SPECIAL PROVISIONS

Method of Measurement: This item shall be measured on a lump sum basis, completed and fully operational in accordance with all local, state and federal codes, laws and regulations.

Basis of Payment: This item of work will be paid for at the contract lump sum price. Payment is full compensation for furnishing all materials, including delivering, installing, providing granular backfill, cover, and bedding, connections, and placing for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 17 – Modular Vault Toilet**

This work consists of furnishing and installing a pre-engineered vault toilet building enclosure with elements including but not limited to concrete, windows, partitions, interior fixtures and assemblies, lights, electrical panel, and hollow metal doors in a manner specified in the plans and in accordance with common construction techniques typical of architectural technical specifications. Foundation materials and installation are included in this bid item. Required electrical connections shall be considered incidental to this bid item. No company logos shall be allowed on the structure.

### Materials and Requirements:

Pre-engineered building and interior fixtures shall be as manufactured by:

Huffcutt Concrete Inc.  
4154 123rd Street  
Chippewa Falls, WI 54729  
t: 715-723-7446  
f: 715-723-7111  
[www.huffcutt.com](http://www.huffcutt.com)  
Contact: Marc Rowe

Or approved equal

Manufacturer shall be an NPCA Certified Plant or equal with verifiable references demonstrating quality, design and service upon request.

Manufacturer will provide a written warranty providing 20 years structural, manufacturer's warranty on all hardware and components not produced at precast concrete manufacturer's plant, and 3 years against defects in paint, caulk, and grout.

Building will be manufactured using precast concrete including the roof. Building's structural design will be relevant to the region and properties associated with its final placement. Design will also meet ADA and building code requirements.

## SPECIAL PROVISIONS

Manufacturer shall provide submittals.

### MATERIALS

#### 1.1. Doors and Frames

1.1.1. Doors shall be 18ga galvanized metal, louvered with 16ga frames. Doors and frames shall include one coat of rust inhibitive primer and two finish coats of enamel paint.

#### 1.2. Door Hardware

1.2.1. Aluminum drip cap. Reese or equal.

1.2.2. Door closure with hold open. Cal-Royal or equal.

1.2.3. Stainless hinges with non-removable pin. Cal-Royal or equal.

1.2.4. Grade 1 lockset. Function and keying to be verified with owner.

1.2.5. Brush style sweep. Reese or equal.

1.2.6. ADA compliant threshold. Reese or equal.

#### 1.3. Windows

1.3.1. Vinyl frame, bug screen and security mesh. Parco or equal.

1.3.1.1.

#### 1.4. Interior Hardware

1.4.1. Stainless 3 roll toilet paper dispensers.

1.4.2. ADA toilet stalls shall have (1) 18" stainless vertical grab bar, (1) 36" stainless horizontal grab bar, (1) 42" stainless horizontal grab bar.

1.4.3. Stainless floor mounted urinal.

1.4.4. Plastic handicap toilet riser. Romtec or equal.

#### 1.5. Vent Pipes

1.5.1. Vent pipes shall be 12" and made of HDPE. Vent pipe shall extend approximately 36" above the roof line.

#### 1.6. Access/Clean Out Hatch

1.6.1. Access/clean out hatch shall have a 24" x 24" clear opening, made from aluminum and be rated for a 300 psf pedestrian load. Cover shall be hinged with a kickstand to prevent accidental closing. Cover shall include a slam lock with T handle for locking.

#### 1.7. Sealers

1.7.1. Floor shall be sealed using a deep penetrating, high alkali resistant, low volatility product. TK-290 or equal.

#### 1.8. Caulks and Grout

1.8.1. All joints between precast panels shall be caulked using a durable, flexible polyurethane sealant. BASF Sonolastic NP-1 or equal.

1.8.2. Weld plate panel connections shall be grouted flush with interior wall surface. Speed Crete Red Line or equal.

#### 1.9. Vault

## SPECIAL PROVISIONS

- 1.9.1. Vault shall be lined with a factory installed membrane. Marflex 5000 or equal.

### FINISHES

#### 1.10. Interior

- 1.10.1. Smooth trowel finish.

#### 1.11. Exterior

- 1.11.1. Exterior wall appearance to be approved by owner using an architectural form liner.
- 1.11.2. Roof shall be cedar shake architectural form liner.

#### 1.12. Paint

##### 1.12.1. Interior

- 1.12.1.1. Wall panels shall be primed with a premium quality water based acrylic bonding primer moisture and alkali resistant. Finish coat shall be a high performance acrylic enamel.

##### 1.12.2. Exterior

- 1.12.2.1. Roof shall be covered with a quality 100% acrylic satin paint. Owner to determine color.
- 1.12.2.2. Walls shall be covered with a quality concrete stain. Owner to determine color.
- 1.12.2.3. Doors shall be covered using 2 coats of a high performance 100% acrylic satin enamel. Owner to determine color.

### EXECUTION

- 1.13. Building manufacturer shall construct, assemble, and paint at their plant so that it may be transported to the jobsite as a finished module and placed using a crane.
- 1.14. Contractor shall provide adequate access and a level pad for the crane and semis to sit side by side under their own power. Working radius shall be 35' from center pin on crane.
- 1.15. Contractor shall provide all excavation, backfilling, and finish grading for vault toilet building. In addition contractor shall provide suitable bedding of sand or granular material for the vault.
- 1.16. Manufacturer will install HDPE vent pipes and perform any shipping and handling adjustments and repairs.

Basis of Payment: Payment is full compensation for furnishing all materials, including transportation, excavation, backfilling, hauling, dense graded base, electrical, concrete, windows, doors, and for installing, placing, finishing, and for all labor, equipment, tools and incidentals necessary to complete this item of work.

## SPECIAL PROVISIONS

This work shall be in accordance with the plans and shall be paid for at the contract unit price of lump sum acceptably complete

### **Item 18 – Campsite Furnishings**

This work consists of providing and installing campsite furnishings (picnic tables and fire rings) and all hardware necessary for installation in the location and manner specified in the plans.

#### Material:

- Picnic Table – Model UT/G-6/E as manufactured by Pilot Rock. Table will have an 8' top to accommodate ADA access. Frame to be galvanized, seats and table top to be made of recycled plastic planks (Cedar color). All hardware to be galvanized or stainless steel.
- Fire Ring – Model MA-32/17 as manufactured by Pilot Rock. Fire ring shall include movable cooking grate and be anchored to the ground with pins. ONE ADA compliant unit must be provided.

Contractor may submit cut sheets for products to be considered as equal at least three days prior to bid.

Construction: Install per detailed plans and in accordance with the manufacturer's recommendations.

Method of Measurement: This item shall be measured and paid for at the contract price for each set of items (one picnic table and one fire ring) acceptably complete.

Basis of Payment: This work will be paid for at the contract unit price per each set of items (one picnic table and one fire ring). Payment is full compensation for furnishing and installing all necessary materials, and necessary hardware and all labor, tools, and equipment and incidentals necessary to complete this item of work.

### **Item 19 – Campsite Markers**

The item is for the supply and installation of carsonite campsite markers with permit clip.

This work consists of furnishing, excavating, installing, and backfilling carsonite campsite markers with clips at the locations designated on the Plans.

Method of Measurement: This item shall be measured and paid per each for acceptably completed work, as measured in the field.

Basis of Payment: This item shall be paid for at the contract unit price per each acceptably installed, as measured in the field. Payment is full compensation for

## SPECIAL PROVISIONS

furnishing all materials, including delivering, excavating, backfilling, and cleaning and for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 20 – Regulatory Signs**

The item parking lot signs shall conform to Section 637 of the standard specifications.

This work consists of furnishing and installing signs and sign posts at the locations designated on the Plans.

Method of Measurement: This item shall be measured and paid for at the contract lump sum price.

Basis of Payment: This work will be paid for at the contract lump sum price. This price shall be full compensation for furnishing all materials, including delivering and installing, and for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 21 – Gate**

The item is for the supply and installation of one entrance gate and associated signage panels.

This work consists of furnishing, excavating, installing, and backfilling concrete gate post bases, gate, and reflective signage, at the locations designated on the Plans.

Construction: Install per detailed plans and in accordance with the manufacturer's recommendations.

Method of Measurement: This item shall be measured and paid for at the contract price for each acceptably completed work, as measured in the field.

Basis of Payment: This item shall be paid for at the contract unit price per each acceptably installed. Payment is full compensation for furnishing all materials, including delivering, excavating, shoring, concrete bases, gate, backfilling, and cleaning and for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 22 – Site Restoration**

This work consists of placing and spreading topsoil on all disturbed areas as shown on the Plans and where directed by the Project Engineer, per Section 625 of the standard specifications. This item includes all materials and work necessary for the placement of grass seed and associated cover crop (annual) over disturbed and topsoiled areas per Section 630 of the standard specifications, mulching per Section 627 of the standard specifications, and fertilizing per Section 629 of the standard specifications. Also included are all materials and work necessary to install permanent erosion matting as

## SPECIAL PROVISIONS

shown on the Plans and where directed by the Project Engineer, per Section 628 of the standard specifications.

Construction: At the contractor's discretion and approval by the Project Engineer, hydro-seeding will be accepted.

All general turf areas shall be planted with WisDOT seed mix #40.

Method of Measurement: Measurement for this item of work will be measured in-place, acceptably completed per square yard.

Basis of Payment: This item shall be paid for at the contract unit price per square yard acceptably completed. Payment is full compensation for furnishing all materials, including delivering, loading, hauling, screening, placing, seeding, fertilizing, mulching, matting, spreading, anchoring, treating, and for all labor, equipment, tools, and incidentals necessary to complete this item of work.

### **Item 23 – Dumpster Enclosure**

This work consists of furnishing and installing the dumpster enclosure with gates including concrete, wood, and metal framing in the manner specified in the plans. Note, the 6" concrete slab shall be paid under Bid Item #8.

#### Materials:

1. All steel tubing and framing to be galvanized. The supporting tubing and framing shall be metal with appropriate wall thickness to support the gate.
1. Commercial grade hinges, gate handles, slide, and cane bolts.
2. Lockset on man door shall be keyed to match park master keys.

Method of Measurement: This item shall be measured and paid for at the contract price lump sum acceptably complete.

Basis of Payment: This work shall be paid for at the contract unit price per enclosure acceptably completed. Payment is full compensation for furnishing all materials, including delivering, excavation, backfilling, hauling, installing, placing, finishing, and for all labor, equipment, tools, and incidentals necessary to complete this item of work.

### **Item 24 – Septic System**

The item is for the construction of the onsite septic system and shall conform to Section 607 of the standard specifications.

## SPECIAL PROVISIONS

This work consists of furnishing, excavating, installing, and backfilling drain field, piping, tank(s), pumps, warning lights, hatches, fittings, and all other required elements as designated on the Plans.

Method of Measurement: This item shall be measured and paid by as a lump sum for acceptably completed work.

Basis of Payment: This item shall be paid for at the contract unit price per lump sum acceptably installed, as measured in the field. Payment is full compensation for furnishing all materials, including delivering, excavating, laying pipe, sealing joints, connecting, providing granular backfill and bedding, backfilling, and cleaning and for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 25 – Dump Station Construction**

This work consists of constructing concrete water tower pads, concrete receptor pad with curb head, constructing all water and sanitary connections, and installing water towers and sanitary receptor. This item includes all fittings, labor, and materials necessary for installation in the location and manner specified in the plans.

Method of Measurement: This item will be measured and paid for at the contract unit price of lump sum acceptably completed.

Basis of Payment: This item of work will be paid for at the contract lump sum price. Payment is full compensation for furnishing all materials including concrete, towers, piping and fittings; for delivering, installing, placing, finishing, and for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **Item 26 – Well**

This item includes all materials and work necessary for the drilling and installation of a 6-inch well and accompanying mechanicals. Work under this item shall conform to section 639 of the standard specifications.

Description: This work consists of furnishing and installing a 6-inch well of sufficient depth (100 foot minimum) to supply the sump station, campsite utility hookups, future toilet/shower building, and should including well drilling, well casing, well pump, electrical service, pressure tank, well seal, drive shoe, HTH, and all fittings/valves. This work also includes all necessary permits and water tests.

Materials: This item shall include a minimum 3/4hp 10-gpm pump, schedule 80 PVC water lateral, 12-3 underground wire, 80-gallon Well-X-Trol pressure tank (or equivalent) or as required to provide adequate service to the site.

Basis of Payment: This work will be paid for at the contract lump sum price. This price shall be full compensation for furnishing all materials, including delivering, installing,

## SPECIAL PROVISIONS

maintenance, removal and for all labor, equipment, tools and incidentals necessary to complete this item of work.

### **ALTERNATE BID ITEMS**

#### **Item A1 – Asphalt Pavement (Add)**

This item includes any cost for the material, trucking, placement, shaping and compaction of the proposed asphalt per Sections 460 and 690 of the standard specifications. Also included in this item is the satisfactory joining of the proposed asphalt pavement into existing asphalt and concrete pavement and gravel drive. Note that aggregate base is not included as part of this bid item. This item must be constructed to a suitable depth per plan details and will be paid by the ton of asphalt placed. Asphalt pavement shall be of type HMA-E-1. Asphalt damaged by the Contractor will be replaced in-kind by the Contractor, at their expense.

Method of Measurement: The quantity of asphaltic pavement shall be measured and paid for by the ton.

Basis of Payment: This item of work will be paid for at the contract unit price per ton. Payment is full compensation for furnishing all materials, including preparing, sawing, hauling, mixing, placing, shaping, compacting, asphaltic materials and for all labor, equipment, tools and incidentals necessary to complete this item of work.

#### **Item A2 – Pavement Marking (Add)**

The item pavement marking shall conform to Sections 646 and 647 of the standard specifications.

This item includes all materials and work necessary for the placement of pavement marking lines, symbols, and arrows at the locations designated on the Plans and where directed by the Engineer.

Construction: Pavement markings shall be white paint per standard specifications.

Method of Measurement: Pavement marking shall be measured and paid for at the contract lump sum price for acceptably completed work.

Basis of Payment: This item will be paid for at the contract lump sum price for pavement marking. This price shall be full compensation for furnishing all materials, including delivering and installing, and for all labor, equipment, tools and incidentals necessary to complete this item of work.

## SPECIAL PROVISIONS

### **Item A3 – Camp Site Utility Hookups (Water Deduct)**

This item includes a deduct for all materials and work necessary for furnishing and installation of the campsite water utility hookups, including hose bibb, post, and all fittings, labor, and materials required.

#### Materials:

- Hose Bibb shall be a frost-free, anti-siphon commercial threaded type.
- 4"x4" brown-treated wood post.

### **Item A4 – 2" PE Water Service (Deduct)**

This item includes the revision in quantity for installation of 2" HDPE water service lateral, valves, and valve boxes. This item includes all fittings, labor, and materials required.

### **Item A5 – 3/4" PE Water Service Laterals (Deduct)**

This item includes the revision in quantity for installation of 3/4" HDPE/PVC water service lateral, valves, valve boxes, and connection to the 2" main line. This item includes all fittings, labor, and materials required.

### **Item A6 – Yard Hydrant**

This work consists of furnishing and installing one yard hydrant assembly, splash deck, drain pipe, and all hardware necessary for installation in the location and manner specified in the plans.

Material: Yard Hydrant to be Murdock model M-92 with vacuum breaker (800) 453-7465 or approved equal.

- Control Valve: Non-cartridge stainless steel O-Ring valve. Washerless.
- Mounting: Surface Mount with stainless steel hardware
- Finish: Standard: Oven baked powder-coat finish complying with finish manufacturer's written instructions for surface preparation, including pretreatment, application, baking, and minimum dry film thickness.

Construction: Install hydrant assembly and drain system per detailed plans and in accordance with the manufacturer's recommendations.

Method of Measurement: This item shall be measured and paid for at the contract lump sum price for acceptably completed work.

Basis of Payment: This work will be paid for at the contract lump sum price. Payment is full compensation for furnishing and installing all necessary materials, including hydrant, drain system, and necessary hardware and all labor, tools, and equipment and incidentals necessary to complete this item of work.

**CONTRACT**  
TORCH LAKE CAMPGROUND IMPROVEMENTS  
TOWN OF CONNOVER, WISCONSIN

THIS AGREEMENT is dated as of the \_\_\_\_ day of \_\_\_\_\_, in the year 2016 by and between the VILAS COUNTY PARK AND RECREATION DEPARTMENT (hereinafter called the OWNER) and \_\_\_\_\_ (hereinafter called the CONTRACTOR)

The OWNER and the CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

The CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The term WisDOT refers to the most current edition of the State of Wisconsin Department of Transportation Standard Specifications for Highway and Structure Construction (Latest Edition) hereinafter. The Work is generally described as follows:

The construction of the TORCH LAKE CAMPGROUND IMPROVEMENTS: The improvements will include excavation of existing site materials, tree clearing, site grading, dump station construction, water line construction, septic field construction, electrical systems, crushed aggregate base course, concrete pavement, asphaltic paving, campsite construction, and erosion control and site restoration.

Article 2. ENGINEER.

The Project has been designed by Ayres Associates hereinafter called the ENGINEER, who will assume such duties and responsibilities and will have the rights and authority assigned to the ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

3.1 The work on the PROJECT shall be completed within xxx days after the date when the Contract Time commences to run, as provided in paragraph 2.03 of the General Conditions, and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 90 calendar days after the date then the Contract Time commences to run.

All efforts shall be made to open the site on or before August 1, 2016. All components may be worked on at the same time. Work cannot begin until May 1, 2016.

3.2 Liquidated Damages. The OWNER and the CONTRACTOR recognize that the OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the OWNER if the Work is not substantially

complete on time. Accordingly, instead of requiring any such proof, the OWNER and the CONTRACTOR agree that as liquidated damages for delay (but not a penalty) the CONTRACTOR shall pay the OWNER a daily charge of 0.1% of the original contract amount or One Hundred Dollars (\$100), whichever is greater, for each day that expires after the time specified in paragraph 3.1 for substantial completion until the Work is substantially complete.

#### Article 4. CONTRACT PRICE.

- 4.1 The OWNER shall pay the CONTRACTOR for performance of the Work in accordance with the Contract Documents and the Contract Drawings in the amount of \_\_\_\_\_ the said amount being the Contract price as stated in the proposal.

#### Article 5. PAYMENT PROCEDURES.

The CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the ENGINEER as provided in the General Conditions. Application for payment shall be made on the forms provided.

- 5.1 Progress Payments. The OWNER shall make progress payments on account of the Contract Price on the basis of the CONTRACTOR's Applications for Payment as recommended by the ENGINEER, on or about the 15th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 14.01 of the General Conditions.
- 5.1.1 Payments Prior to Substantial Completion. Progress payments will be in an amount equal to: 90% of the Work completed, and 90% of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made, until 50% of the work has been completed. Following 50% completion, further partial payments shall be made in full to the CONTRACTOR and no additional amounts may be retained unless the ENGINEER certifies that the job is not proceeding satisfactorily.
- 5.1.2 Payment Upon Substantial Completion. The OWNER shall pay an amount sufficient to increase total payments to the CONTRACTOR to 95% of the Contract Price, less such amounts as the ENGINEER shall determine in accordance with paragraph 14.04 of the General Conditions.
- 5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, the OWNER shall pay the remainder of the Contract Price as recommended by the ENGINEER as provided in said paragraph 14.07.

#### Article 6. INTEREST.

All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce the OWNER to enter into this Agreement the CONTRACTOR makes the following representations:

- 7.1 The CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- 7.2 The CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by the ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3 The CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.4 The CONTRACTOR has given the ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by the ENGINEER is acceptable to the CONTRACTOR.

Article 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between the OWNER and the CONTRACTOR are attached to this Agreement, made a part hereof and consist of the following:

- 8.1 This Agreement (Pages C-1 to C-5 inclusive).
- 8.2 Performance and other Bonds consisting of four (4) pages, Standard Forms as included herein, to be filled out and returned to the OWNER within five (5) days of signing this Agreement.
- 8.3 Notice of Award.
- 8.4 General Conditions.
- 8.5 Supplementary General Conditions (pages SCG-1 to SCG-3 inclusive)
- 8.6 Exhibits to this Agreement consisting of the following: None
- 8.7 Drawings consisting of sheets numbered as follows with the following general title:  
Drawings:  
  
Refer to Table of Contents
- 8.8 The CONTRACTOR's Bid (Pages B-1 to B-3 inclusive).

8.9 Documentation submitted by the CONTRACTOR prior to Notice of Award [Pages \_\_\_\_\_ to \_\_\_\_\_ inclusive].

8.10 Any modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a modification (as defined in Section I of the General Conditions).

#### Article 9. HIERARCHY

If discrepancies appear between two or more sections of the specifications and contract documents the following hierarchy shall be used:

1. Written Amendments
2. Agreement
3. Change Orders
4. Addenda
5. Special Provisions
6. Supplementary Conditions
7. General Conditions
8. Specifications
9. Drawings

#### Article 10. MISCELLANEOUS.

10.1 Terms used in this Agreement, which are defined in Article I of the General Conditions shall have the meanings indicated in the General Conditions.

10.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and, unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.3 The OWNER and the CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

Article 11. OTHER PROVISIONS.

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

This Agreement will be effective on \_\_\_\_\_, 2014.

OWNER: **VILAS COUNTY PARK AND  
RECREATION DEPARTMENT**

CONTRACTOR:

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

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

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

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

\*\*\*

DRAFT  
not for construction

**PERFORMANCE BOND**  
TORCH LAKE CAMPGROUND IMPROVEMENTS  
TOWN OF CONNOVER, WISCONSIN

KNOW ALL MEN BY THESE PRESENTS, that we, \_\_\_\_\_

as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the Vilas County Park and Recreation Department hereinafter called the OWNER, in the penal sum of \_\_\_\_\_ lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents.

The condition of the obligation is such that whereas the Principal has executed the attached Contract dated \_\_\_\_\_ for TORCH LAKE CAMPGROUND IMPROVEMENTS.

NOW, THEREFORE, if the Principal shall:

1. Well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the OWNER, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; and
2. Promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said Contract, and any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then this obligation to be void, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this \_\_\_\_ day of \_\_\_\_\_, 2016, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

IN THE PRESENCE OF:

INDIVIDUAL PRINCIPAL:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ [SEAL]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ [SEAL]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ [SEAL]

CORPORATE PRINCIPAL:

(Affix Corporate Seal)

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

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

CORPORATE SURETY:

(Affix Corporate Seal)

\_\_\_\_\_  
\_\_\_\_\_  
(Business Address)  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

\*\*\*

**PAYMENT BOND**  
TORCH LAKE CAMPGROUND IMPROVEMENTS  
TOWN OF CONNOVER, WISCONSIN

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_ whose address is \_\_\_\_\_ a (corporation, partnership, or individual), hereinafter called the PRINCIPAL, and \_\_\_\_\_ hereinafter called the SURETY, are held and firmly bound unto the Vilas County Park and Recreation Department, hereinafter called the 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 that whereas the PRINCIPAL entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016, a copy of which is hereto attached and made a part thereof, for the construction of TORCH LAKE CAMPGROUND IMPROVEMENTS.

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 change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

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

IN WITNESS WHEREOF, the above bounden parties have executed this instrument in \_\_\_\_ counterparts, each one of which shall be deemed an original, under their several seals this \_\_\_\_ day of \_\_\_\_\_, 2016. The name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

IN THE PRESENCE OF:

INDIVIDUAL PRINCIPAL:

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

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

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

CORPORATE PRINCIPAL:

(Affix Corporate Seal)

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

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

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

CORPORATE SURETY:

(Affix Corporate Seal)

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

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

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

NOTE: Date of Bond must not be prior to date of Contract. If CONTRACTOR is a partnership, all partners should execute the 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.

\*\*\*

**NOTICE OF AWARD**  
TORCH LAKE CAMPGROUND IMPROVEMENTS  
TOWN OF CONNOVER, WISCONSIN

TO:

Project Description: TORCH LAKE CAMPGROUND IMPROVEMENTS

The OWNER has considered the Bid submitted by you for the above- described work in response to its Advertisement for Bids dated February XX and March XX, 2016 and Information for Bidders.

You are hereby notified that your Bid has been accepted for items in the amount of \$\_\_\_\_\_.

You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR's Performance Bond, Payment Bond and certificates of insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said bonds within ten (10) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER's acceptance of your bid as abandoned and as a forfeiture of your Bid Bond. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the OWNER.

Dated this \_\_\_ day of \_\_\_\_\_, 2016.

Vilas County Park and Recreation Dept.  
Eagle River, Wisconsin

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

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

**ACCEPTANCE OF NOTICE**

Receipt of the above Notice of Award is hereby acknowledged by \_\_\_\_\_.

This \_\_\_ day of \_\_\_\_\_, 2016.

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

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

\*\*\*

**NOTICE TO PROCEED**  
TORCH LAKE CAMPGROUND IMPROVEMENTS  
TOWN OF CONNOVER, WISCONSIN

TO:

Project: TORCH LAKE CAMPGROUND IMPROVEMENTS

You are hereby notified to commence work in accordance with the Agreement dated \_\_\_\_\_, 2016, on or before \_\_\_\_\_, 2016, and you are to complete the work within XX consecutive calendar days thereafter. The date of completion of all work is \_\_\_\_\_, 2016.

Blake Theisen, PLA.  
Landscape Architect  
SAA Design Group, Inc.  
Madison, Wisconsin

ACCEPTANCE OF NOTICE

Receipt of the above Notice to Proceed is hereby acknowledged by \_\_\_\_\_.

this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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

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

\*\*\*

**SETTLEMENT CERTIFICATION FORM**  
TORCH LAKE CAMPGROUND IMPROVEMENTS  
TOWN OF CONNOVER, WISCONSIN  
Submit with Final Payment Request

Ayres Associates  
101 East Badger Road  
Madison, WI 53713

Attention: Blake Theisen, PLA, Project Manager

Reference: TORCH LAKE CAMPGROUND IMPROVEMENTS, TOWN OF CONNOVER, WISCONSIN

**CERTIFICATION**

The undersigned hereby certifies that all debts and claims against the referenced contract for this project have either been paid in full or have otherwise been satisfied. The acceptance of final payment for the referenced contract by the undersigned shall constitute a waiver of all claims by this CONTRACTOR.

DRAFT  
not for construction

Signature \_\_\_\_\_

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

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

Subscribed to and sworn before me this  
\_\_\_\_ day of \_\_\_\_\_, 2016

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

My commission expires \_\_\_\_\_

\*\*\*

**STORAGE AGREEMENT FORM**  
TORCH LAKE CAMPGROUND IMPROVEMENTS  
TOWN OF CONNOVER, WISCONSIN

SPECIAL PROCEDURE FOR OBTAINING PAYMENT FOR  
MATERIALS NOT STORED AT THE SITE OF THE WORK

This agreement applies only to:

Project: TORCH LAKE CAMPGROUND IMPROVEMENTS

Owner: Vilas County Park and Recreation Department

Contractor:

Due to the limited amount of space available for the storage of materials at the site, the OWNER will, under the following conditions, approve partial payments for certain materials stored off the premises.

1. Prior Approval. The CONTRACTOR shall obtain the approval of the OWNER and the ENGINEER before making any arrangements to obtain a certification for payment for materials stored off the site. If this is necessary, materials must be suitable for storage and must be properly packaged.
2. Storage Site. The CONTRACTOR shall furnish and maintain a suitable storage site and proper storage conditions which must be approved in advance by the ENGINEER.
3. Storage Conditions. The material covered by the request for certification for partial payment must be stored above grade, and must be properly protected at all times against weather, heat, cold, moisture and other hazards as the material may require. The storage conditions must be approved by the ENGINEER. All protection must be provided by the CONTRACTOR at his own expense, and must be maintained throughout the storage period.

Material must not be commingled with other similar material, but must be stored by itself and must be plainly labeled "Property of Vilas County." Material must be stored so that it can be readily inspected, measured and counted at all times by the OWNER's Representative.

4. Bill of Sale. Request for certification for partial payment for materials stored under the above conditions must be accompanied by a Bill of Sale properly identifying the material and transferring ownership of the materials to the OWNER. The Bill of Sale must be accompanied by an inventory of the stored material, together with a description of the storage site by street number and city, or by a legal description of the premises.
5. Insurance. If the OWNER carries Builder's Risk Insurance for the project, the OWNER shall be notified to cause Builder's Risk, Fire and Extended Coverage insurance policy covering this project to include the materials stored off-site, in the amount and under the same conditions as those provided for material stored on the site of the project. The signing of "Storage Conditions

Approved" shall be confirmation that insurance coverage has been provided. Unless specifically exempted by the OWNER, the CONTRACTOR shall furnish insurance against loss by theft or vandalism, and the OWNER shall be named the beneficiary under the policy, as trustee for all concerned.

6. Responsibility. The CONTRACTOR agrees that, in accepting partial payment for the stored materials, he is in no way relieved of responsibility for the safe storage of the material and its safe transportation and installation in the work, or for furnishing and installing the material in strict accordance with drawings and specifications.

The CONTRACTOR also agrees that acceptance by the OWNER of a Bill of Sale for the material does not imply acceptance of the material, which shall be subject to final acceptance or rejection up to the time the CONTRACTOR's work is completed and finally accepted.

The CONTRACTOR also agrees that the usual guarantee covering his work under the drawings, specifications and contract is in no way impaired as a result of the partial payment and the acceptance of the Bill of Sale.

The OWNER accepts no responsibility in connection with the material.

7. Acceptance. The CONTRACTOR shall indicate his acceptance of the above conditions by signing and returning one (1) copy of this storage agreement.

ACCEPTED:

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

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

CONTRACTOR:

STORAGE CONDITIONS APPROVED:

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

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

ENGINEER: Ayres Associates

MATERIAL STORED:

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

STORAGE SITE:

\_\_\_\_\_

\*\*\*

**CONTRACT CHANGE ORDER FORM**  
TORCH LAKE CAMPGROUND IMPROVEMENTS  
TOWN OF CONNOVER, WISCONSIN

CHANGE ORDER NO.:

DATE:

PROJECT: TORCH LAKE CAMPGROUND IMPROVEMENTS

PROJECT NO.: #27-1015

OWNER: Vilas County Park and Recreation Department

CONTRACTOR:

DESCRIPTION OF WORK ADDED OR DEDUCTED:

REASON FOR CHANGE:

---

The original Contract sum was.....  
Net change by previous Change Orders .....  
Contract sum prior to this Change Order was .....  
Contract sum will be increased/decreased/unchanged by this Change Order .....  
New Contract sum, including this Change Order, will be.....  
Contract time will be increased/decreased/unchanged by \_\_\_\_ days.  
Therefore, the date of completion as of this Change Order form is \_\_\_\_\_.

---

RECOMMENDED BY: Ayres Associates

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

ACCEPTED BY:

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

APPROVED BY: Vilas County Park and Recreation Department

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

\*\*\*

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

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly By



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

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AMERICAN CONSULTING ENGINEERS COUNCIL

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AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General [seal] Contractors of America

Construction Specifications Institute

[seal]

These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

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## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

---

#### 1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

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

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

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

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

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

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the

Contract Times, issued on or after the Effective Date of the Agreement.

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

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

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

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

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

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

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

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

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

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

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

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

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

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

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

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

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

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

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

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

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

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

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

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

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

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

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

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

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

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

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

43. *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.

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

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

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum

products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

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

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

## 1.02 Terminology

### A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or 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 action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such

term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. *Day*

1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. *Furnish, Install, Perform, Provide*

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

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

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

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

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

ARTICLE 2 - PRELIMINARY MATTERS

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2.01 *Delivery of Bonds*

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 *Copies of Documents*

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

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

however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; 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.

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

#### 2.06 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

#### 2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten 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 any specified Milestones and 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 Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

### ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

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#### 3.01 *Intent*

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

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

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

### 3.02 *Reference Standards*

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

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

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to

OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

#### B. *Resolving Discrepancies*

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

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

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

### 3.05 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific

written verification or adaption by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

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

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4.01 *Availability of Lands*

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

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

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

4.02 *Subsurface and Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and
2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except

Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

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

4.03 *Differing Subsurface or Physical Conditions*

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

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection

therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. *Possible Price and Times Adjustments*

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

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

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

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

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

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

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

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

4.04 *Underground Facilities*

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

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

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

a. reviewing and checking all such information and data,

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

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

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

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

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

#### 4.05 *Reference Points*

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

or property monuments by professionally qualified personnel.

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

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

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

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

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

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such

condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

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

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefore as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

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

4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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

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

## ARTICLE 5 - BONDS AND INSURANCE

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

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

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

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

#### 5.02 *Licensed Sureties and Insurers*

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

#### 5.03 *Certificates of Insurance*

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

#### 5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

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

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

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

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

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

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

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

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

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

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

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

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

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

#### 5.05 *OWNER's Liability Insurance*

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

#### 5.06 *Property Insurance*

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

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of

them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

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

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

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

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

6. include testing and startup; and

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

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

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will

not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

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

#### 5.07 *Waiver of Rights*

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary

Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other 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 peril whether or not insured by OWNER; and

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

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

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

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

account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

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

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

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

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

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but

the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

## ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

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### 6.01 *Supervision and Superintendence*

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

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

### 6.02 *Labor; Working Hours*

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work 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, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

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

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

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for 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. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

### 6.04 *Progress Schedule*

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

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

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using

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

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

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

#### 2. *Substitute Items*

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

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be

accepted by ENGINEER from anyone other than CONTRACTOR.

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

d. CONTRACTOR shall first 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 shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in

ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

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

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

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

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

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

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

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to OWNER in

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

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents 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 shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

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

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

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

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appro-

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

#### 6.07 *Patent Fees and Royalties*

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

## 6.08 Permits

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

## 6.09 Laws and Regulations

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

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

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

## 6.10 Taxes

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

## 6.11 Use of Site and Other Areas

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

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

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

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

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

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all

property not designated for alteration by the Contract Documents.

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

#### 6.12 *Record Documents*

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

#### 6.13 *Safety and Protection*

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

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

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

loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, 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). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 *Safety Representative*

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

#### 6.15 *Hazard Communication Programs*

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

#### 6.16 *Emergencies*

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

## 6.17 Shop Drawings and Samples

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, 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.

### D. Submittal Procedures

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

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

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

c. all information relative to means, methods, techniques, sequences, and procedures of

construction and safety precautions and programs incident thereto; and

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

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

### E. ENGINEER's Review

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

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

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation

from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.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 approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

#### F. *Resubmittal Procedures*

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

#### 6.18 *Continuing the Work*

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

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

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. 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.

B. 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 acceptance by OWNER or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or 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.

#### 6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other 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:

1. 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; and
2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for

whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

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

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them 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.

## ARTICLE 7 - OTHER WORK

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### 7.01 *Related Work at Site*

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

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

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

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

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

### 7.02 *Coordination*

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

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

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

## ARTICLE 8 - OWNER'S RESPONSIBILITIES

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### 8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

### 8.02 *Replacement of ENGINEER*

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

### 8.03 *Furnish Data*

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

### 8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

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

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

### 8.06 *Insurance*

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

### 8.07 *Change Orders*

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

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

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

### 8.09 *Limitations on OWNER's Responsibilities*

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

### 8.10 *Undisclosed Hazardous Environmental Condition*

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

### 8.11 *Evidence of Financial Arrangements*

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

## ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

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### 9.01 *OWNER'S Representative*

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth

in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

#### 9.02 *Visits to Site*

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

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

#### 9.03 *Project Representative*

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

#### 9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

#### 9.05 *Authorized Variations in Work*

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

#### 9.06 *Rejecting Defective Work*

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

#### 9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

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

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

#### 9.08 *Determinations for Unit Price Work*

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

#### 9.09 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

#### 9.10 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking,

exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

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

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

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

### ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

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#### 10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

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

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

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

#### 10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

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

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

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

#### 10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be

given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

#### 10.05 *Claims and Disputes*

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

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with

respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

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

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### 11.01 *Cost of the Work*

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

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

included in the above to the extent authorized by OWNER.

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

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

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

5. Supplemental costs including the following:

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

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

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

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

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

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

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

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

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the

Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

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

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

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

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

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

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

C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined

on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

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

#### 11.02 *Cash 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 as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the 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 costs, overhead, profit, and other expenses contemplated for the 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.

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

#### 11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

B. 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.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

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

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

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

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

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#### 12.01 *Change of Contract Price*

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

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

1. where the Work involved is covered by unit prices

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

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

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

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

1. a mutually acceptable fixed fee; or

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

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

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

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

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

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

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with para-

graphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

## 12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

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

## 12.03 *Delays Beyond CONTRACTOR's Control*

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

## 12.04 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

## 12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

## 12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

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

### 13.01 *Notice of Defects*

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

### 13.02 *Access to Work*

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

### 13.03 *Tests and Inspections*

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections,

tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

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

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

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

3. as otherwise specifically provided in the Contract Documents.

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

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

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

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

### 13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGI-

NEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefore as provided in paragraph 10.05. If, however, such 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 Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefore as provided in paragraph 10.05.

#### 13.05 *OWNER May Stop the Work*

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

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

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

#### 13.07 *Correction Period*

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such 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, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. 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 or by Written Amendment.

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

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

#### 13.08 *Acceptance of Defective Work*

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

#### 13.09 *OWNER May Correct Defective Work*

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

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

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

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

### ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

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#### 14.01 *Schedule of Values*

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

## 14.02 *Progress Payments*

### A. *Applications for Payments*

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

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

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

### B. *Review of Applications*

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

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's

review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

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

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or

equipment has passed to OWNER free and clear of any Liens.

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 referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

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

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

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

d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

#### C. *Payment Becomes Due*

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

#### D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

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

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

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

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

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

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

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

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

#### 14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefore. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If,

after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefore. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

A. Use by OWNER at OWNER's option of 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, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

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

the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. 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 therefore. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

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

#### 14.06 *Final Inspection*

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

#### 14.07 *Final Payment*

##### A. *Application for Payment*

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

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

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

#### B. *Review of Application and Acceptance*

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

#### C. *Payment Becomes Due*

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

#### 14.08 *Final Completion Delayed*

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

#### 14.09 *Waiver of Claims*

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

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

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND  
TERMINATION

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15.01 OWNER May Suspend Work

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

15.02 OWNER May Terminate for Cause

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

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

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

3. CONTRACTOR's disregard of the authority of ENGINEER; or

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

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), 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 finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be

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

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

15.03 OWNER May Terminate For Convenience

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for 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. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

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

4. for reasonable expenses directly attributable to termination.

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

#### 15.04 *CONTRACTOR May Stop Work or Terminat*

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

### ARTICLE 16 - DISPUTE RESOLUTION

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#### 16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

### ARTICLE 17 - MISCELLANEOUS

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#### 17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

#### 17.02 *Computation of Times*

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

#### 17.03 *Cumulative Remedies*

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

#### 17.04 *Survival of Obligations*

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

#### 17.05 *Controlling Law*

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

**SUPPLEMENTARY GENERAL CONDITIONS**  
TORCH LAKE CAMPGROUND IMPROVEMENTS  
TOWN OF CONNOVER, WISCONSIN

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

**SC-1.**

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (EJCDC No. 1910-8, 1993 edition) have the meanings assigned to them in the General Conditions.

**SC-2.05.C.**

Delete paragraph 2.05.C of the General Conditions in its entirety and insert the following in its place.

2.05.C Before any Work at the site is started, the CONTRACTOR shall deliver to the OWNER, with a copy to the ENGINEER, certificates (and other evidence of insurance requested by the OWNER) which the CONTRACTOR is required to purchase and maintain in accordance with Article 5.

**SC-5.04.**

The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by law. The Dodge County Land Resources & Parks Department and its engineers shall also be listed as additional insureds under the:

5.04.1 and 5.04.2 Workers' Compensation, etc. under paragraphs 5.04.1 and 5.04.2 of the General Conditions:

- (1) State: Statutory
- (2) Applicable Federal (e.g. Longshoreman's): Statutory

5.04.3, 5.04.4, and 5.04.5. Comprehensive General Liability (under paragraphs 5.04.3 through 5.04.5 of the General Conditions):

- (1) Bodily Injury:
  - \$1,000,000 Each Occurrence
  - \$2,000,000 Annual Aggregate, Products and Completed Operations
- (2) Property Damage:
  - \$1,000,000 Each Occurrence
  - \$1,000,000 Annual Aggregate
- (3) Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where applicable.
- (4) The County and its Engineers shall be listed as additional insureds. Insurance shall be furnished by insurers with A.M. Best Company rating of at least A- (excellent) and a financial size of VIII or greater.

5.04.6. Comprehensive Automobile Liability:

- (1) Bodily Injury:
  - \$1,000,000 Each Person
  - \$2,000,000 Each Accident
- (2) Property Damage: \$1,000,000 Each Occurrence

SC-5.06.

Delete Paragraph 5.06 of the General Conditions in its entirety and insert the following in its place:

5.06 Unless otherwise provided in these Supplementary Conditions, the CONTRACTOR shall purchase and maintain property insurance upon the Work at the site to the full insurable value thereof (subject to such deductible amounts as may be provided in these Supplementary Conditions or required by law). This insurance shall:

(Continue with Paragraph 5.06.1)

SC-5.06.B.

Delete Paragraph 5.06.B of the General Conditions in its entirety and insert the following in its place.

5.06.B. The CONTRACTOR shall purchase and maintain such boiler and machinery insurance as may be required by law. This insurance shall include the interests of OWNER, CONTRACTOR and Subcontractors Engineer and Engineer's Consultant in the Work.

SC-5.09.

Delete paragraph 5.14 of the General Conditions in its entirety and insert the following in its place.

5.09. If the OWNER has any objection to the coverage afforded by or other provisions of the insurance

required to be purchased and maintained by the CONTRACTOR in accordance with paragraphs 5.04, 5.05, 5.06 and 5.07 on the basis of its not complying with the Contract Documents, the OWNER will notify the CONTRACTOR in writing thereof within ten (10) days of the date of delivery of such certificates to the OWNER in accordance with paragraph 2.05.C.

Failure by the OWNER to give any such notice of objection within the time provided shall constitute acceptance of such insurance purchased by the other as complying with the Contract Documents. OWNER and CONTRACTOR will each provide to the other such additional information in respect of insurance provided by him as the other may reasonably request.

6.08 Permits: For projects involving approvals from the State of Wisconsin Department of Industry, Labor and Human Relations (DILHR), the ENGINEER will obtain and pay for State of Wisconsin approvals relating to the following:

1. Building Approval
2. Heating and Ventilating Approval - With necessary input of equipment being supplied by CONTRACTOR
3. Plumbing Approval
4. State Inspection Fee

CONTRACTOR shall obtain all other permits and pay all fees in accordance with Section 6.08 of the General Conditions.

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