

**CONTRACT DOCUMENTS**

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**SHELLMAN BLUFF  
FIRE STATION**

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**January 16, 2019**

**For  
MCINTOSH COUNTY, GEORGIA**



**PROJECT TABLE OF CONTENTS**

**DIVISION 00 - PROCUREMENT AND CONTRACTING REQUIREMENTS**

00 01 20	ADVERTISEMENT FOR BIDS
00 01 30	INSTRUCTIONS TO BIDDERS
00 41 13	BID FORM
00 43 13	BID BOND
00 45 13	STATEMENT OF BIDDER'S QUALIFICATIONS
00 45 19	NONCOLLUSION AFFIDAVIT
00 45 46.10	AFFIDAVIT VERIFYING STATUS FOR COUNTY PUBLIC BENEFIT
00 45 46.20	GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVITS
00 51 00	NOTICE OF AWARD
00 52 13	AGREEMENT
00 55 00	NOTICE TO PROCEED
00 61 13.13	PERFORMANCE BOND
00 61 13.16	PAYMENT BOND
00 72 00	GENERAL CONDITIONS
00 73 00	SUPPLEMENTARY CONDITIONS

-- End of Project Table of Contents --

00 01 20

ADVERTISEMENT FOR BIDS

PART 1 GENERAL

**McIntosh County Board of Commissioners (BOC)  
1200 North Way  
Darien, Georgia 31305**

**SHELLMAN BLUFF FIRE STATION**

Sealed Bids will be received by the McIntosh County BOC for SHELLMAN BLUFF FIRE STATION. The contractor will furnish all materials and perform all work associated with the project.

Separate sealed bids for construction of SHELLMAN BLUFF FIRE STATION will be received by McIntosh County BOC (also referred to as Owner) from qualified Contractors to include all associated work labor and materials, equipment and appurtenances required to complete the work for SHELLMAN BLUFF FIRE STATION as described herein.

Bids will be received at the McIntosh County BOC, 1200 North Way, Darien, Georgia 31305, at 2:00 p.m. legal local time, Wednesday, March 20, 2019 and then publicly opened and read aloud. Bids submitted by mail or courier are required to be delivered before the Bid Opening time stated above and should be addressed to: McIntosh County BOC, 1200 North Way, Darien, Georgia 31305, Attention: Shawn Jordan.

No proposal will be considered unless it is accompanied by satisfactory evidence that the Bidder is a Georgia licensed General Contractor in accordance with OCGA 43-41-2(5). Bidder must provide evidence of compliance with this requirement.

No bid may be modified, withdrawn, or canceled for a period of sixty (60) days after the time designated for receipt of Bids, or until notified by Owner, whichever is sooner.

Bids must be accompanied by a certified check or Bid Bond in the amount of five percent of the bid amount. The successful bidder must be able to provide a Payment Bond and Performance Bond within ten days of Notice of Award. These bonds must be in the amount of 100 percent of the contract amount.

A non-collusion affidavit must be completed and submitted as part of the Contractor's bid.

McIntosh County BOC reserves the right to reject any and all bids and to waive irregularities, technicalities, and informalities.

The Contract Documents may be examined at the following locations:

McIntosh County BOC  
Office of the County Manager  
1200 North Way  
Darien, GA 31305

Sets of the Bid packages consisting of one set of plans and specifications

may be obtained at the office of McIntosh County Board of Commissioners.

s/J. Patrick Zoucks, County Manager  
McIntosh County BOC  
1200 North Way  
Darien, GA 31305  
January 16, 2019

PART 2 PRODUCTS

Not Applicable

PART 3 EXECUTION

Not Applicable -- End of Section --

00 01 30

## INSTRUCTIONS TO BIDDERS

## PART 1 GENERAL

## 1.1 DEFINED TERMS

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract have the meanings assigned to them in the General Conditions.

Certain additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

- a. Bidder: One who submits a Bid directly to Owner as distinct from a sub-bidder, who submits a bid to a Bidder.
- b. Issuing Office: The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
- c. Successful Bidder: The lowest, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

## 1.2 COPIES OF BIDDING DOCUMENTS

- a. Complete sets of the Bidding Documents may be obtained from McIntosh County Board of Commissioners. Bidding Documents are open for inspection to prospective bidders at the Issuing Office for the purpose of review in order to determine if the prospective bidders wish to obtain Bidding Documents.
- b. Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents, whether obtained from the Owner or other sources.
- c. Owner in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

## 1.3 QUALIFICATIONS OF BIDDERS

- a. Before submitting a bid, the bidder shall have a General Contractor license issued by the State of Georgia in accordance with OCGA 43-41-2(5). Bidder to provide evidence of compliance with this requirement. Failure of Bidder to provide such information if requested, within 10 days of notification of request, shall be grounds for forfeiting of the bid security of that Bidder.

## 1.4 EXAMINATION OF CONTRACT DOCUMENTS

- a. It is the responsibility of each Bidder before submitting a Bid:

1. To examine thoroughly the Contract Documents and other related data identified in the Bidding Documents including "technical data" referred to below;
  2. To consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work;
  3. To study and carefully correlate Bidder's knowledge and observations with the Contract Documents and such other related data; and
  4. To promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.
- b. Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.
- c. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Contract Documents due to differing or unanticipated conditions appear in Paragraphs "Subsurface and Physical Conditions", "Differing Subsurface or Physical Conditions" and "Underground Facilities" of the General Conditions.
- d. Before submitting a Bid each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.
- e. On request, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder must fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests and studies.
- f. Reference is made to the Supplementary Conditions for the identification of the general nature of work that is to be performed at the site by Owner or others (such as utilities and other prime contractors) that relates to the work for which a Bid is to be submitted. On request, Owner will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such work.
- g. The submission of a Bid will constitute an incontrovertible

representation by Bidder that Bidder has complied with every requirement of this Paragraph "EXAMINATION OF CONTRACT DOCUMENTS", that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by Engineer is acceptable to Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

- h. The provisions of Paragraph "EXAMINATION OF CONTRACT DOCUMENTS AND SITE" Subparagraphs a through h, of these Instructions To Bidders, inclusive, do not apply to Hazardous Environmental Conditions covered by Paragraph "Hazardous Environmental Condition at Site" of the General Conditions.

#### 1.5 AVAILABILITY OF LANDS FOR WORK, ETC.

The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by the Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by the Owner unless otherwise provided in the Contract Documents.

- a. The sites are located on County maintained public roads. Contractor is responsible for maintaining access to the sites by traffic while Work is being performed. The Contractor shall develop and implement a traffic control plan and place traffic control signage within the project sites including GA DOT right-of-way, and perform traffic control activities to minimize disruption of the public within the project area and surrounding areas. Contractor is required to obtain any necessary traffic control permits required by GDOT for traffic control operations or for signage placed within GA DOT right-of-way.

#### 1.6 INTERPRETATIONS AND ADDENDA

- a. All questions about the meaning or intent of the Bidding Documents are to be directed to Engineer. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Issuing Officer as having received the Bidding Documents. Questions received less than five days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- b. Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer.
- c. Failure of any Bidder to receive any such addendum or interpretations shall not relieve such bidder from any obligations under his Bid as submitted.

- d. Failure of any Bidder to acknowledge any such addendum or interpretations shall not relieve such Bidder from any obligation under his Bid as submitted, if Bidder has knowledge of any such addendum, or interpretations. If Bidder has knowledge of any such addendum or interpretation but fails to acknowledge, this will be considered a formality.

#### 1.7 BID SECURITY

- a. Each Bid must be accompanied by a Bid Bond on the form attached with good and sufficient surety or sureties approved by the owner and meeting the requirements of Paragraph "Performance, Payment, and Other Bonds" of the General Conditions, for faithful acceptance of the contract, payable to, in favor of, and for the protection of the OWNER in an amount equivalent to five percent of the total amount payable by the terms of the contract, in lieu thereof, in the form of a certified check, cashier's check, or cash in equal amount. Bidders who submit Bid Security in the form of a certified check, cashier's check, or cash are bound by the "Terms of Bid Bond" as if submitted on the attached "Bid Bond" form.
- b. The Bid security of Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security and Certifications of Insurance and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within ten days after the Notice of Award, Owner may annul the Notice of Award and Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the 66th day after the Bid opening whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within seven days after the Bid opening, if requested by the Respective Bidder.

#### 1.8 CONTRACT TIMES

The number of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment are set forth in the Agreement and incorporated therein by reference in the attached Bid Form.

#### 1.9 LIQUIDATED DAMAGES

Provisions for liquidated damages are set forth in the Agreement.

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

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



Paragraph "Substitutes and "Or Equals"" of the General Conditions and may be supplemented in the General Requirements.

1.11 SUBCONTRACTORS, SUPPLIERS AND OTHERS

- a. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening submit to Owner a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person or organization if requested by Owner. An Owner or Engineer who after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, may before the Notice of Award is given request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit an acceptable substitute, that Bidder's price will be increased (or decreased) by the difference in cost occasioned by such substitution and Owner may consider such price adjustment in evaluating Bids and making the contract award.
- b. If apparent Successful Bidder declines to make any such substitution, Owner may award the contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph "Concerning Subcontractors, Suppliers, and Others" of the General Conditions.

1.12 BID FORM

- a. The Bid Form is included with the Bidding Documents; additional copies may be obtained from the issuing Office.
- b. All blanks on the Bid Form must be completed by printing in ink or by typewriter.
- c. Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.
- d. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

- e. All names must be typed or printed in ink below the signature.
- f. The Bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).
- g. The address and telephone number for communications regarding the Bid must be shown.
- h. Evidence of authority to conduct business as an out-of-state corporation in the state where the Work is to be performed shall be provided in accordance with Paragraph "QUALIFICATIONS OF BIDDERS" of these Instructions To Bidders. State contractor license number must also be shown.
- i. Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his address, and the name of the project for which the bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the bid form. Any bid which is not properly prepared and accompanied by required certifications and affidavits may be rejected by the Owner.

#### 1.13 SUBMISSION OF BIDS

Bids shall be submitted at the time and place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, state contractor license number (if applicable) and accompanied by the Bid security, entire bidding documents, except drawings, and other required documents. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

#### 1.14 MODIFICATION OF BIDS

- a. Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the receiving time.

#### 1.15 OPENING OF BIDS

Bids will be opened and (unless obviously non-responsive) read aloud publicly at the place where Bids are to be submitted. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the effective date of the Contract.

- a. The Owner is not obligated to consider a Bidder's proposal, if Bidder is not on record with the Issuing Office as having received complete Bidding Documents from the Issuing Office.
- b. No bid shall be considered unless a proper bid bond or other security authorized in Paragraph "BID SECURITY" of these Instructions To Bidders is submitted.

#### 1.16 BIDS TO REMAIN SUBJECT TO ACCEPTANCE

All Bids will remain subject to acceptance for sixty days after the day of

the Bid opening, but Owner may, in its sole discretion, release the Bid and return the Bid security prior to that date.

#### 1.17 AWARD OF CONTRACT

- a. Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms with the successful Bidder. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.
- b. In evaluating Bids, Owner will consider the qualifications of Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award. Conditional Bids will not be accepted.
- c. Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.
- d. Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.
- e. Owner intends to award both Division I and Division II Work to one contractor. The Owner reserves the right to reduce the project scope and Work associated with Division II by not awarding Division II work in order to reduce the contract amount to the available budget.
- f. If the contract is to be awarded, it will be awarded to lowest Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Project. No portion of the project will be awarded to separate bidders.
- g. If the contract is to be awarded, Owner will give Successful Bidder a Notice of Award within 65 days after the day of the Bid opening.

1.18 CONTRACT SECURITY

The General Conditions and the Supplementary Conditions set forth Owner's requirements as to Performance and Payment Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required Performance and Payment Bonds on the forms included in the Contract Documents.

1.19 SIGNING OF AGREEMENT

When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within ten days thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds and Certification of Insurance. Within ten days thereafter Owner shall deliver one fully signed counterpart to Contractor. Each counterpart is to be accompanied by a complete set of the Drawings and applicable documents with appropriate identification.

1.20 LAWS AND REGULATIONS

All applicable federal and state laws, municipal ordinances, and rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

PART 2 PRODUCTS

Not Applicable

PART 3 EXECUTION

Not Applicable

-- End of Section --

00 41 13

BID FORM

PART 1 GENERAL

1.1 PROJECT IDENTIFICATION

**SHELLMAN BLUFF FIRE STATION  
McINTOSH COUNTY, GEORGIA**

1.2 THIS BID IS SUBMITTED TO:

McINTOSH COUNTY  
1200 North Way  
Darien, Georgia 31305

- a. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents, within the times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents for the following Base Bid Price:

**BASE BID:**

The Base Bid includes all materials and equipment and performing all work necessary for the construction of Shellman Bluff Fire Station facilities and other work as shown on the Drawings and described in the Specifications. Bidder agrees to perform all the Base Bid Work described in the Contract Documents for the following lump sum amount:

**Base Bid Amount:** \_\_\_\_\_  
 \_\_\_\_\_ (\$ \_\_\_\_\_ )  
 (words and figures)

**ADDITIVE ALTERNATE NO. 1:**

Bidder agrees to increase the scope of construction for Additive Alternate No. 1 to include finishing second story office space in the building as indicated on the Architectural Plans. The following Lump Sum Additive Alternate No. 1 amount will apply, if the Owner selects to increase the scope of work:

**Additive Alternate No. 1 Amount:** \_\_\_\_\_  
 \_\_\_\_\_ (\$ \_\_\_\_\_ )  
 (words and figures)

- b. BIDDER accepts all of the terms and conditions of the Advertisement for Bidders and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for sixty days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds, Certifications of Insurance, and other documents required by the Bidding Requirements within ten days after

the date of OWNER's Notice of Award.

c. In submitting the Bid, BIDDER represents, as more fully set forth in the Agreement, that:

1. BIDDER has examined and carefully studied the Bidding Documents and the following Addenda, receipt of all which is hereby acknowledged: (List Addenda by Addendum Number and Date)

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2. BIDDER has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work;

3. BIDDER is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

4. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relates to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by BIDDER and safety precautions and programs incident thereto. BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.

5. BIDDER is aware of the general nature of Work to be performed by Owner and others at the site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.

6. BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7. BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.

8. This Bid is genuine and not made in the interest of or on behalf

of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

- d. BIDDER will complete the Work in accordance with the Contract Documents for the following price:
- e. BIDDER agrees that the Work will be substantially complete within 270 days after the date when the Contract Times commences to run as provided in the General Conditions, and completed and ready for final payment in accordance with the General Conditions within 300 days after the date when the Contract Times commences.

BIDDER will complete the Work in accordance with the Contract Documents and in accordance with the scheduled times shown above.

BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the time(s) specified in the Agreement.

- f. The following documents are attached to this Bid:
  - 1. Required Bid Security in the form of Bid Bond, Certified Check, Cashier's Check, or Cash.
  - 2. Bidders who submit Bid Security in the form of a Certified check, Cashier's Check, or Cash are bound by the "Terms of Bid Bond" as if submitted on the attached "Bid Bond" form.
  - 3. Bid Tabulation Form.

g. Communications concerning this Bid shall be addressed to:

The address of BIDDER indicated below.

BIDDER'S NAME \_\_\_\_\_

Primary Contact Person \_\_\_\_\_

Secondary Contact Person \_\_\_\_\_

Bidder's Street Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Bidder's Mailing Address \_\_\_\_\_

(if different) \_\_\_\_\_

Bidder's Phone # \_\_\_\_\_

Bidder's Fax # \_\_\_\_\_

Georgia Utility Contractor's License No.\*

\_\_\_\_\_

\* Note: Required - Any bid not identified by correct license number will be considered incomplete & will not be accepted.)

h. Terms used in this Bid which are defined in the General Conditions or Instructions will have the meanings indicated in the General Conditions or Instructions.

THIS BID SUBMITTED on \_\_\_\_\_, 20\_\_\_\_. If Bidder is:

An Individual

By \_\_\_\_\_ (SEAL)  
(Individual's Name)

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

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

Phone Number: \_\_\_\_\_

A Partnership

By \_\_\_\_\_ (SEAL)  
(Firm Name)

\_\_\_\_\_ (General Partner)

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

Phone Number: \_\_\_\_\_

A Corporation

By \_\_\_\_\_ (SEAL)  
(Corporation Name)

\_\_\_\_\_ (State of Incorporation)

By \_\_\_\_\_ (SEAL)  
(Name of Person Authorized to Sign)

\_\_\_\_\_ (Title)  
(Corporate Seal)

Attest \_\_\_\_\_

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

Phone Number: \_\_\_\_\_



Date of Qualification to do business is \_\_\_\_\_

PART 2 PRODUCTS

Not Applicable

PART 3 EXECUTION

Not Applicable

-- End of Section --

00 43 13

BID BOND

PART 1 GENERAL

PENAL SUM FORM

**BIDDER:** (Name and Address)

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

**SURETY:** (Name and Address of Principal Place of Business)

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

**OWNER:**

McIntosh County BOC  
1200 North Way  
Darien, Georgia 31305

**BID**

BID DUE DATE: \_\_\_\_\_

PROJECT (Brief Description Including Location):

McIntosh County BOC  
SHELLMAN BLUFF FIRE STATION  
1200 North Way  
Darien, Georgia 31305

**BOND**

BOND NUMBER \_\_\_\_\_

DATE (Not later than Bid Due Date) \_\_\_\_\_:

PENAL SUM: 5 PERCENT OF BID

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the following terms hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

TERMS OF BID BOND

- a. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond.
- b. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents the executed Agreement required by the Bidding Documents, any performance and payment bonds, and Certification of Insurance required by the Bidding Documents and Contract Documents.
- c. This obligation shall be null and void if:
  1. Owner accepts Bidder's bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents, any performance and payment bonds and Certification of Insurance required by the Bidding Documents and Contract Documents, or
  2. All bids are rejected by Owner, or
  3. Owner fails to issue a notice of award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by **Paragraph e below**).
- d. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
- e. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue notice of award agreed to in writing by Owner and Bidder, provided that the time for issuing notice of award including extensions shall not in the aggregate exceed 120 days from the Bid Due Date without Surety's written consent.
- f. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in **Paragraph d** above is received by Bidder and Surety, and in no case later than one year after Bid Due Date.
- g. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
- h. Notice required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
- i. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute,

seal and deliver such Bond and bind the Surety thereby.

- j. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirements of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of the Bond conflicts with any applicable provision of any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
- k. The term "bid" as used herein includes a bid, offer or proposal as applicable.

CONTRACTOR AS PRINCIPAL	SURETY
Company: _____	Company: _____

_____	_____
-------	-------

(Corp. Seal)	(Corp. Seal)
--------------	--------------

Signature: _____	Signature: _____
------------------	------------------

_____	_____
Name and Title	Name and Title

Notes:

- (1) Above addresses are to be used for giving required notice.
- (2) Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.
- (3) All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- (4) 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.
- (5) The power-of-attorney of the Attorney-in-fact signing for the surety company must be attached to the Bid Bond.

PART 2 PRODUCTS

Not Applicable

PART 3 EXECUTION

Not Applicable

-- End of Section --

00 45 13

STATEMENT OF BIDDER'S QUALIFICATIONS

PART 1 GENERAL

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized and submitted per Section 00030, Instructions to Bidders. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information he desires.

1. Name of Bidder: \_\_\_\_\_

2. Permanent main office \_\_\_\_\_  
\_\_\_\_\_

3. When organized: \_\_\_\_\_

4. If a corporation, where incorporated: \_\_\_\_\_

5. How many years have you been engaged in the contracting business under your present firm or trade name: \_\_\_\_\_

6. Contacts on hand: (Schedule these, showing amount of each contract, name, address and telephone number of Owner and/or Engineer; and the appropriate anticipated dates of completion.)

7. General character of work performed by your company:  
\_\_\_\_\_

8. Have you ever failed to complete any work awarded to you? \_\_\_\_\_  
If so, where and why? \_\_\_\_\_  
\_\_\_\_\_

9. Have you ever defaulted on a contract? \_\_\_\_\_ If so, where and why?  
\_\_\_\_\_  
\_\_\_\_\_

10. List the more important projects recently completed by your company, stating the approximate cost for each, name, address and telephone number of Owner and/or Engineer; and the month and year completed.

11. List your major equipment and equipment manufacturer available for this contract.

12. Experience in construction work similar in importance to this project

13. Background and experience of the principal members of your organization, including officers.

- 14. Credit available: \$ \_\_\_\_\_
- 15. Give bank references: \_\_\_\_\_
- 16. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the City? \_\_\_\_\_
- 17. Have the principals of the corporation ever been associated with another corporation? \_\_\_\_\_
- 18. The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the City in verification of the recitals comprising this Statement of Bidder's Qualifications.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NAME OF BIDDER

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

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

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ ) SS.

\_\_\_\_\_ being duly sworn deposes and says that he is \_\_\_\_\_ of (Name of Organization): \_\_\_\_\_ and that the answers to the foregoing questions and all statements therein contained are true and correct.

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires \_\_\_\_\_, 20\_\_

PART 2 PRODUCTS

Not used.

PART 3 EXECUTION

Not used.

-- End of Section --



SECTION 00 45 19

NONCOLLUSION AFFIDAVIT

PART 1 GENERAL

THIS AFFIDAVIT IS TO ACCOMPANY THE BID

STATE OF GEORGIA

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, of lawful age, being first duly sworn, on oath says that (s)he is the agent authorized by the bidder to submit the attached bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any state official or employee as to the quantity, quality, or price in the prospective contract, or any other terms of said prospective contract; or in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract.

\_\_\_\_\_  
Name of Company

By: \_\_\_\_\_  
Authorized Officer or Agent

\_\_\_\_\_  
Date of Execution Affidavit

\_\_\_\_\_  
Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

\_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

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

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

PART 2 PRODUCTS

Not Applicable

PART 3 EXECUTION

Not Applicable

-- End of Section --



SECTION 00 45 46.10

AFFIDAVIT VERIFYING STATUS FOR COUNTY PUBLIC BENEFIT

PART 1 GENERAL

By executing this affidavit under oath, as an applicant for Construction Contract services for Public Infrastructure Construction, as referenced in O.C.G.A. §50-36-1, from McIntosh County, the undersigned applicant verifies one of the following with respect to my application for a public benefit:

- 1. \_\_\_\_\_ I am a United States citizen.
- 2. \_\_\_\_\_ I am a legal permanent resident of the United States.
- 3. \_\_\_\_\_ I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act with an alien number issued by the Department of Homeland Security or other federal immigration agency.

My alien number issued by the Department of Homeland Security or other federal immigration agency is \_\_\_\_\_.

The undersigned applicant also hereby verifies that he or she is 18 years of age or older and has provided at least one secure and verifiable document, as required by O.C.G.A. §50-36-1(e)(1), with this affidavit.

The secure and verifiable document provided with this affidavit can best be classified as:

\_\_\_\_\_

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A. §16-10-20, and face criminal penalties as allowed by such criminal statute.

Executed in \_\_\_\_\_ (city), \_\_\_\_\_ (state).

By: \_\_\_\_\_  
Signature of Applicant Date

\_\_\_\_\_  
Printed Name of Applicant

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

\_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

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

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

PART 2 PRODUCTS

Not Applicable

PART 3 EXECUTION

Not Applicable

-- End of Section --

## SECTION 00 45 46.20

## GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVITS

## PART 1 GENERAL

The McIntosh County and Contractor agree that compliance with the requirements of O.C.G.A. § 13-10-91, as amended, and Rule 300-10-1-.02 of the Rules of the Georgia Department of Labor are conditions of this Agreement for the physical performance of services.

The Contractor further agrees that its compliance with the requirements of O.C.G.A. § 13-10-91, as amended, and DOL Rule 300-10-1-.02 is attested to on the executed Contractor Affidavit and Agreement attached hereto.

If employing or contracting with any subcontractor(s) in connection with this Agreement, Contractor further agrees:

1. To secure from the subcontractor(s) an affidavit attesting to the subcontractor's compliance with O.C.G.A. § 13-10-91, as amended, and DOL Rule 300-10-1-.02; such affidavit being in the form attached hereto; and
2. To submit such subcontractor affidavit(s) to the County when the subcontractor(s) is retained, but in any event, prior to the commencement of work by the subcontractor(s).

The failure of Contractor to supply the affidavit of compliance at the time of execution of this Agreement and/or the failure of Contractor to continue to satisfy the obligations of O.C.G.A. § 13-10-91, as amended, and DOL Rule 300-10-1-.02 as set forth in this Agreement throughout the contract period shall constitute a material breach of the contract. Upon notice of such breach, Contractor shall be entitled to cure the breach within ten days, upon providing satisfactory evidence of compliance with the terms of this Agreement and State law. Should the breach not be cured, McIntosh County shall be entitled to all available remedies, including termination of the contract and damages.

Required Affidavits are included on the following pages.

**CONTRACTOR AFFIDAVIT & AGREEMENT**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. §13-10-91, as amended, stating affirmatively that the individual, firm or corporation which is contracting with McIntosh County, has registered and is participating in a federal work authorization program\* [an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the provisions established in O.C.G.A. §13-10-91, as amended.

The undersigned further agrees that should it employ any new employees or contract with any subcontractor(s) for the physical performance of services pursuant to the contract with McIntosh County, the Contractor will secure from the subcontractor(s) verification of compliance with O.C.G.A. §13-10-91, as amended, on the attached Subcontractor Affidavit. The undersigned contractor further agrees to use the federal work authorization program throughout the contract period and to maintain records of such compliance and to provide a copy of each such verification to McIntosh County, at the time the subcontractor(s) is retained to perform such services.

\_\_\_\_\_  
Name of Public Employer

\_\_\_\_\_  
Name of Project

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
EEV / Basic Pilot Program\* User  
Identification Number  
(<https://e-verify.uscis.gov/enroll/>)

\_\_\_\_\_  
Date of Authorization

By: \_\_\_\_\_  
Authorized Officer or Agent

\_\_\_\_\_  
Date of Execution Affidavit

\_\_\_\_\_  
Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

\_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

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

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

\* Note: As of the effective date of O.C.G.A. §13-10-91, the applicable federal work authorization program is the "EEV / Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau (USCIS) of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

**SUBCONTRACTOR AFFIDAVIT & AGREEMENT**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. §13-10-91, as amended, stating affirmatively that the individual, firm or corporation which is contracting with \_\_\_\_\_ (Contractor) on behalf of McIntosh County, has registered and is participating in a federal work authorization program\* [an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, in accordance with the provisions established in O.C.G.A. §13-10-91, as amended. Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as shown below:

\_\_\_\_\_  
Name of Public Employer

\_\_\_\_\_  
Name of Project

\_\_\_\_\_  
Name of Sub-contractor

\_\_\_\_\_  
EEV / Basic Pilot Program\* User  
Identification Number  
(<https://e-verify.uscis.gov/enroll/>)

\_\_\_\_\_  
Date of Authorization

By: \_\_\_\_\_  
Authorized Officer or Agent

\_\_\_\_\_  
Date of Execution Affidavit

\_\_\_\_\_  
Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

\_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

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

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

\* Note: As of the effective date of O.C.G.A. § 13-10-91, the applicable federal work authorization program is the "EEV / Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau (USCIS) of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

**SUB-SUBCONTRACTOR AFFIDAVIT & AGREEMENT**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, as amended, stating affirmatively that the individual, firm or corporation which is contracting with McIntosh County, has registered and is participating in a federal work authorization program\* [an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the provisions established in O.C.G.A. § 13-10-91, as amended. The undersigned sub-subcontractor shall submit at the time of such contract, this affidavit to the sub-contractor or sub-subcontractor with whom such sub-contractor has privity of contract. Additionally, the undersigned sub-subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor that has contracted with a sub-subcontractor within five business days of receipt, a copy of such notice to the subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract. Sub-subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as shown below:

\_\_\_\_\_  
Name of Public Employer

\_\_\_\_\_  
Name of Project

\_\_\_\_\_  
Name of Sub-subcontractor

\_\_\_\_\_  
EEV / Basic Pilot Program\* User  
Identification Number  
(<https://e-verify.uscis.gov/enroll/>)

\_\_\_\_\_  
Date of Authorization

By: \_\_\_\_\_  
Authorized Officer or Agent

\_\_\_\_\_  
Date of Execution Affidavit

\_\_\_\_\_  
Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

\_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

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

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

\* Note: As of the effective date of O.C.G.A. §13-10-91, the applicable federal work authorization program is the "EEV / Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau (USCIS) of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

PART 2 PRODUCTS

Not Applicable

PART 3 EXECUTION

Not Applicable

-- End of Section --

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00 51 00

NOTICE OF AWARD

PART 1 GENERAL

To:

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

Project Description:

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

The Owner has considered the Bid submitted by you for the above described Work in response to its Advertisement For Bids dated January 16, 2019 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 Instructions to Bidders document to execute the General Contract and furnish the required Performance Bond and Payment Bond within ten calendar days from the date of receipt of this Notice by you. Return all document copies to the Engineer for further processing, review and distribution to the parties to the contract.

If you fail to execute said Agreement and to furnish said Bonds within ten days from the date of receipt of this Notice, the Owner will be entitled to consider his rights stipulated in the Contract Documents.

You are required to return acknowledged copies of this Notice Of Award and Agreement to the Engineer within ten days of receipt of the Documents.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Owner: \_\_\_\_\_

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

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

**ACCEPTANCE OF NOTICE**

Receipt of the Notice of Award is hereby acknowledged by:

\_\_\_\_\_

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



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

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

PART 2 PRODUCTS

Not Applicable

PART 3 EXECUTION

Not Applicable

-- End of Section --

00 52 13

## AGREEMENT

## PART 1 GENERAL

**THIS AGREEMENT** is dated as of the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ by and between McIntosh County (hereinafter called OWNER) and

\_\_\_\_\_  
(hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

## 1.1 WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**SHELLMAN BLUFF FIRE STATION**

## 1.2 ENGINEER

The Project has been designed by Brennan Jones Engineering Associates, LLC, who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

## 1.3 CONTRACT TIMES

- a. The Work will be substantially completed within 270 days after the date when the Contract Times commence to run as provided in the General Conditions, and completed and ready for final payment in accordance with the General Conditions within 300 days after the date when the Contract Times commence to run.
- b. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph "CONTRACT TIMES" Subparagraph a above, plus any extensions thereof allowed in accordance with the General Conditions.
- c. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER two hundred dollars (\$200.00) for each day that expires after the time specified in Paragraph "CONTRACT TIMES" Subparagraph a above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in Paragraph "CONTRACT TIMES" Subparagraph a for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER two hundred dollars (\$200.00) for each day that expires after the time specified in Paragraph "CONTRACT TIMES" Subparagraph a for completion and readiness for final payment.

#### 1.4 CONTRACT PRICE

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to **Subparagraph a below**:

- a. The Contractor agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the sum of

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(\$ \_\_\_\_\_), payable in current funds, subject to adjustments, if any, as provided in the Contract Documents.

#### 1.5 PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Part "PAYMENTS TO CONTRACTOR AND COMPLETION" of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

##### 1.5.1 Progress Payments/Retainage

OWNER shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by ENGINEER during construction as provided in **Subparagraphs a and b below**.

- a. All such payments will be measured by values of work completed as provided by the schedule established in the General Conditions (and in the case of Unit Price Work based on the number of units completed), plus the value of materials and equipment suitably stored, insured, and protected at the construction site, and with the OWNER's consent, such materials and equipment suitably stored, insured and protected off-site at a location approved by the ENGINEER, less a retainage of ten percent of each progress payment requested; provided, however, when fifty percent of the Contract Price, including change orders and other additions to the Contract, is due and the manner of completion of the contract work and its progress is reasonably satisfactory to the ENGINEER, in its sole discretion, the OWNER shall withhold no more retainage on additional work completed. The CONTRACTOR shall be entitled to withhold retainage from subcontractors accordingly. At the discretion of the OWNER, upon recommendation of the ENGINEER and with consent of the CONTRACTOR, the retainage of each subcontractor may be released separately as the subcontractor completes his work.
- b. If, after discontinuing the retainage, the ENGINEER determines that the work is unsatisfactory or has fallen behind schedule, retention shall be resumed at the previous level. If retention is resumed, the CONTRACTOR shall be entitled to withhold retainage from subcontractors accordingly.

##### 1.5.2 Final Payment

- a. At substantial completion of the contract work and as the ENGINEER determines the work to be reasonably satisfactory, the OWNER shall within 30 days after presentation of Application and other appropriate documentation as required by the General Conditions are provided, pay the retainage to the CONTRACTOR. If at that time there are any remaining incomplete minor items, an amount equal to 200 percent of the value of each item, as determined by the ENGINEER, shall be withheld

until such item or items are completed. The reduced retainage shall be shared by the CONTRACTOR and subcontractors as their interests may appear. The CONTRACTOR shall, within ten days from CONTRACTOR's receipt of retainage from the OWNER, pass through payments to subcontractors and shall reduce each subcontractor's retainage in the same manner as the CONTRACTOR's retainage is reduced by the OWNER provided that the value of each subcontractor's work complete and in place equals fifty percent of his subcontract value, including approved change orders and other additions to the subcontract value and provided further that the work of the subcontractor is proceeding satisfactorily and the subcontractor has provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete his work, including any warranty work as the CONTRACTOR in his reasonable discretion may require, including, but not limited to, a payment and performance bond.

- b. The subcontractor shall, within ten days from the subcontractor's receipt of retainage from the CONTRACTOR, pass through payments to the lower tier subcontractors and shall reduce each lower tier subcontractor's retainage in the same manner as the subcontractor's retainage is reduced by the CONTRACTOR, provided that the value of each lower tier subcontractor's work complete and in place equals fifty (50%) percent of his subcontract value, including approved change orders and other additions to the subcontract value and provided further, that the work of the lower tier subcontractor is proceeding satisfactorily and the lower tier subcontractor has provided such satisfactory reasonable assurances of continued performance and financial responsibility to complete his work including any warranty work as the subcontractor in his reasonable discretion may require, including, but not limited to, a payment and performance bond.
- c. All prior certificates or estimates upon which payments have been made are approximate only, and subject to correction in the final payment.

#### 1.5.3 Contractor's Agreements with Subcontractors

The CONTRACTOR hereby covenants and agrees with OWNER to obtain written agreements from each subcontractor setting forth payment procedures in accordance with the foregoing provisions of this Section. Nothing contained herein shall preclude the CONTRACTOR, prior to making payment to a subcontractor, from requiring the payee to submit satisfactory evidence that all payrolls, materials bills, and other indebtedness connected with the work have been paid

#### 1.6 CONTRACTOR'S REPRESENTATIONS

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

- a. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Paragraph "CONTRACT DOCUMENTS", if any) and the other related data identified in the Bidding Documents including "technical data."
- b. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, process, performance or furnishing of the Work.
- c. CONTRACTOR is familiar with and is satisfied as to all federal, state

and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

- d. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph "Subsurface and Physical Conditions" of the General Conditions. CONTRACTOR accepts the determination set forth in the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in Paragraph "Subsurface and Physical Conditions" of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- e. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- f. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- g. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

#### 1.7 CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- a. Agreement
- b. Bid Form
- c. Performance Bond
- d. Payment Bond

- e. Notice to Proceed
- f. General Conditions
- g. Supplementary Conditions
- h. Specifications bearing the title SHELLMAN BLUFF FIRE STATION as listed in table of contents thereof.
- i. Drawings bearing the title SHELLMAN BLUFF FIRE STATION.
- j. Addenda number(s) \_\_\_\_\_ to \_\_\_\_\_, inclusive.
- k. Documentation submitted by CONTRACTOR (if applicable) prior to Notice of Award.
- l. Other exhibits (if applicable) to this Agreement marked, \_\_\_\_\_.
- m. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

All written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to requirements of the General Conditions.

The documents listed as "Bid Form" et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are not Contract Documents other than those listed above in this Paragraph "CONTRACT DOCUMENTS". The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

#### 1.8 MISCELLANEOUS

- a. Terms used in this Agreement, which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- b. 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.
- c. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- d. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

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

This Agreement will be effective on \_\_\_\_\_, 20\_\_\_\_ (which is the Effective Date of the Agreement)

**OWNER:**

**CONTRACTOR:**

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

(SEAL)

(SEAL)

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement)

Agent for service of process:  
\_\_\_\_\_  
(If CONTRACTOR is a corporation, of authority to sign.)

PART 2 PRODUCTS

Not Applicable

PART 3 EXECUTION

Not Applicable

-- End of Section --

SECTION 00 55 00

NOTICE TO PROCEED

PART 1 GENERAL

1.1 REFERENCES

To:

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

Project Description:

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

You are hereby notified to commence Work in accordance with the Agreement dated \_\_\_\_\_, 201\_\_ and you are to complete the Work within \_\_\_\_\_ consecutive calendar days thereafter. The date of completion of all Work is therefore \_\_\_\_\_, 201\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

Owner: \_\_\_\_\_

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

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

ACCEPTANCE OF NOTICE

Receipt of the Notice of Award is hereby acknowledged by:

\_\_\_\_\_

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

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

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

PART 2 PRODUCTS

Not Applicable



PART 3 EXECUTION

Not Applicable

-- End of Section --

00 61 13.13

PERFORMANCE BOND

PART 1 GENERAL

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR:** (Name and Address)

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

**OWNER:**

**McIntosh County BOC  
1200 North Way  
Darien, Georgia 31305**

**CONSTRUCTION CONTRACT:**

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

Amount: \_\_\_\_\_

Description (Name and Location):

**McIntosh County BOC  
SHELLMAN BLUFF FIRE STATION  
1200 North Way  
Darien, Georgia 31305**

**SURETY** (Name and Principal Place of Business): \_\_\_\_\_

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

**BOND:**

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

Amount: \_\_\_\_\_ **100 percent of contract amount)**

Bond Number: \_\_\_\_\_

- a. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
- b. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to

participate in conferences as provided in [Subparagraph c.1 below](#).

c. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

1. The Owner has notified the Contractor and the Surety at its address described in [Paragraph j below](#), that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
2. The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in [Subparagraph c.1 above](#); and
3. The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

d. When the Owner has satisfied the conditions of [Paragraph c above](#), the Surety shall promptly and at the Surety's expense take one of the following actions:

1. Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or
2. Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the
4. Pay Owner the amount of damages as described in [Paragraph f below](#) in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
5. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
  - a. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefore to the Owner; or

- b. Deny liability in whole or in part and notify the Owner citing reasons therefor.
- e. If the Surety does not proceed as provided in Paragraph d above with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph d.4 above, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
- f. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraphs d.1, d.2, or d.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
1. The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  2. Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the action or failure to act of the Surety under Paragraph d above; and
  3. Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- g. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
- h. The Surety hereby waives notice of any change, including changes of time to the Construction Contract or to related subcontracts, purchase orders and other obligations.
- i. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- j. Notice to the Surety or the Contractor shall be mailed or delivered to the address shown on the signature page.

- k. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
1. Definitions.
1. Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
  2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
  3. Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
  4. Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONTRACTOR AS PRINCIPAL

SURETY

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Corp. Seal)

(Corp. Seal)

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

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

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

Contractor Address for Giving Notices:

Surety Address for Giving Notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Notes:

- (1) 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.
- (2) The power-of-attorney of the Attorney-in-fact signing for the surety company must be attached to the Performance Bond.

PART 2 PRODUCTS

Not Applicable

PART 3 EXECUTION

Not Applicable

-- End of Section --

00 61 13.16

PAYMENT BOND

PART 1 GENERAL

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR:** (Name and Address)

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

**OWNER:**

**McIntosh County BOC  
1200 North Way  
Darien, Georgia 31305**

**CONSTRUCTION CONTRACT:**

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

Amount: \_\_\_\_\_

Description (Name and Location):

**McIntosh County BOC  
SHELLMAN BLUFF FIRE STATION  
1200 North Way  
Darien, Georgia 31305**

**SURETY** (Name and Principal Place of Business): \_\_\_\_\_

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

**BOND:**

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

Amount: \_\_\_\_\_ **100 percent of contract amount)**

Bond Number: \_\_\_\_\_

- a. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner and for the use and protection of all subcontractors and persons supplying labor, materials, machinery and equipment in the prosecution of the Work involved in this Construction Contract.
- b. With respect to the Owner, this obligation shall be null and void if

the Contractor:

1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  2. Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 11) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
- c. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment directly or indirectly, for all sums due.
- d. The Surety shall have no obligations to Claimant unless the Claimant has substantially complied with the requirements of O.C.G.A. 36-82-104 by giving the notices provided for therein. Each Claimant failing to substantially comply with said Code Section shall be deemed to have waived the protection of the payment bond. No Claimant shall file an action for payment against the Owner, Contractor or Surety, except in accordance with this section.
1. Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address shown on the signature page) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  2. Claimants who do not have a direct contract with the Contractor:
    - a. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim, stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
    - b. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
    - c. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address shown on the signature page) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
- e. If a notice required by Paragraph d above is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
- f. When the Claimant has satisfied the conditions of Paragraph d above, the Surety shall promptly and at the Surety's expense, take the



following actions:

1. Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and that basis for challenging any amount that are disputed.
  2. Pay or arrange for payment of any undisputed amounts.
- g. The Surety's total obligation shall not exceed the amount of this Bond and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
- h. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
- i. The Surety shall not be liable to the Owner, Claimants or others for obligation of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments, to give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
- j. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
- k. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on this Bond.
- l. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in the Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
- m. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
- n. Definitions:
1. Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment"

that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

- 2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 3. Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONTRACTOR AS PRINCIPAL  
Company: \_\_\_\_\_

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

\_\_\_\_\_  
(Corp. Seal)

\_\_\_\_\_  
(Corp. Seal)

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

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

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

Contractor Address for Giving Notices:  
\_\_\_\_\_  
\_\_\_\_\_

Surety Address for Giving Notices:  
\_\_\_\_\_  
\_\_\_\_\_

Notes:

- (1) 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.
- (2) The power-of-attorney of the Attorney-in-fact signing for the surety company must be attached to the Payment Bond.

PART 2 PRODUCTS

Not Applicable

PART 3 EXECUTION

Not Applicable

-- End of Section --

00 72 00

## GENERAL CONDITIONS

## PART 1 DEFINITIONS AND TERMINOLOGY

## 1.1 DEFINED TERMS

- a. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial letters in the Contract Documents include references to identified parts and paragraphs, and the titles of other documents or forms.
1. Addenda: Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. Agreement: The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
  3. Application for Payment: The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. Asbestos: Any material that contains more than one percent asbestos and is mable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. Bid: The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. Bidder: The individual or entity who submits a Bid directly to Owner.
  7. Bidding Documents: The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. Bidding Requirements: The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.
  9. Change Order: A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
  10. Claim: A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. Contract: The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. Contract Documents: Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. Contract Price: The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.3 in the case of Unit Price Work).
14. Contract Times: The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. Contractor: The individual or entity with whom Owner has entered into the Agreement.
16. Cost of the Work-See Paragraph 11.1.a for definition.
17. Drawings: That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. Effective Date of the Agreement: The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. Engineer: The individual or entity named as such in the Agreement.
20. Field Order: A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. General Requirements: Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
22. Hazardous Environmental Condition: The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
23. Hazardous Waste: The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. Laws and Regulations; Laws or Regulations: Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. Liens: Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. Milestone: A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. Notice of Award: The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. Notice to Proceed: A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. Owner: The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. PCBs: Polychlorinated biphenyls.
31. Petroleum: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. Progress Schedule: A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. Project: The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. Project Manual: The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. Radioactive Material: Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. Related Entity: An officer, director, partner, employee, agent, consultant, or subcontractor.
37. Resident Project Representative: The authorized representative of Engineer who may be assigned to the Site or any part thereof.
38. Samples: Physical examples of materials, equipment, or workmanship

that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. Schedule of Submittals: A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
40. Schedule of Values: A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
41. Shop Drawings: All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
42. Site: Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
43. Specifications: That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
44. Subcontractor: An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
45. Substantial Completion: The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
46. Successful Bidder: The Bidder submitting a responsive Bid to whom Owner makes an award.
47. Supplementary Conditions: That part of the Contract Documents which amends or supplements these General Conditions.
48. Supplier: A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.
49. Underground Facilities: All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water,

other liquids or chemicals, or traffic or other control systems.

50. Unit Price Work: Work to be paid for on the basis of unit prices.
51. Work: The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
52. Work Change Directive: A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evident that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.2 TERMINOLOGY

- a. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.
- b. Intent of Certain Terms or Adjectives
  1. The Contract Documents include the terms "as allowed," "as approved," "as ordered", "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.9 or any other provision of the Contract Documents.
- c. Day
  1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
- d. Defective
  1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:



- a. does not conform to the Contract Documents, or
  - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
  - c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.4 or 14.5).
- e. Furnish, Install, Perform, Provide
1. The word "furnish", when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word "install", when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words "perform" or "provide", when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. When "furnish", "install", "perform", or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.
- f. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## PART 2 PRELIMINARY MATTERS

### 2.1 DELIVERY OF BONDS AND EVIDENCE OF INSURANCE

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

### 2.2 COPIES OF DOCUMENTS

- a. Owner shall furnish to Contractor up to five printed or hard copies of

the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

#### 2.3 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.

#### 2.4 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.

#### 2.5 BEFORE STARTING CONSTRUCTION

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

#### 2.6 PRECONSTRUCTION CONFERENCE

- a. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.5.a, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

#### 2.7 INITIAL ACCEPTANCE OF SCHEDULES

- a. 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 2.5.a. 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 the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

PART 3 CONTRACT DOCUMENTS: INTENT AMENDING, REUSE

3.1 INTENT

- a. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- b. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.
- c. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in PART 9.
- d. In case of unresolved conflict between items of the Contract Documents, the following order of precedence shall govern, with the higher item taking precedence over a lower item:
  1. Contract (including Supplemental Agreements and Change Orders thereto)
  2. Addenda
  3. Instructions to Bidders
  4. Bid
  5. Supplemental General Conditions
  6. General Conditions
  7. Specifications
  8. Federal Provisions and Regulations
  9. Governing Standard Specifications
  10. Schedules on Drawings
  11. Notes on Drawings
  12. Details on Drawings
  13. Large Scale Drawings
  14. Small Scale Drawings
  15. Dimensions Given in Figures
  16. Scaled Dimensions
  17. Additional Instructions and Detail Drawings
  18. Shop Drawings

### 3.2 REFERENCE STANDARDS

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

### 3.3 REPORTING AND RESOLVING DISCREPANCIES

- a. Reporting Discrepancies
  1. Contractor's Review of Contract Documents Before Starting Work: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
  2. Contractor's Review of Contract Documents During Performance of Work: If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.a) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.4.
  3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.
- b. Resolving Discrepancies
  1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or

discrepancy between the provisions- of the Contract Documents and:

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

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

#### 3.4 AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

a. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

b. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.d.3); or

3. Engineer's written interpretation or clarification.

#### 3.5 REUSE OF DOCUMENTS

a. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or

2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer.

b. The prohibition of this Paragraph 3.5 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

#### 3.6 Electronic Data

a. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

- b. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

PART 4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.1 AVAILABILITY OF LANDS

- a. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.5.
- 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.

4.2 SUBSURFACE AND PHYSICAL CONDITIONS

- a. Reports and Drawings: The Supplementary Conditions identify:
  - 1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and
  - 2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.
- b. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to

be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

#### 4.3 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 4.2 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;
  5. 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 4.3.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 4.3.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 9.7 and 11.3.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
  - c. Contractor failed to give the written notice as required by Paragraph 4.3.a.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.5. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.4 UNDERGROUND FACILITIES

- a. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
  1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
  2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all such information and data,
    - b. locating all Underground Facilities shown or indicated in the Contract Documents,
    - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
    - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- b. Not Shown or Indicated
  1. If an Underground Facility is uncovered or revealed at or



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

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.5.

#### 4.5 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.

#### 4.6 HAZARDOUS ENVIRONMENTAL CONDITION AT SITE

- a. Reports and Drawings: Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.
- b. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- c. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- d. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.a); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.
- e. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.5.
- f. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.5. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with PART 7.
- g. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants,

and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.6.g shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- h. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.6.h shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- i. The provisions of Paragraphs 4.2, 4.3, and 4.4 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

#### PART 5 BONDS AND INSURANCE

##### 5.1 PERFORMANCE, PAYMENT, AND OTHER BONDS

- a. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.7, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- b. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.
- c. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.1.b, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall

comply with the requirements of Paragraphs 5.1.b and 5.2.

#### 5.2 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.

#### 5.3 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.

#### 5.4 CONTRACTOR'S LIABILITY INSURANCE

- a. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
  1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
  3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
    - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor,  
or
    - b. by any other person for any other reason;
  5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
  6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- b. The policies of insurance required by this Paragraph 5.4 shall:

1. with respect to insurance required by Paragraphs 5.4.a.3 through 5.4.a.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include completed operations insurance;
4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.3 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 13.7; and
7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.
  - a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

#### 5.5 OWNER'S LIABILITY INSURANCE

- a. In addition to the insurance required to be provided by Contractor under Paragraph 5.4, 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.

#### 5.6 PROPERTY INSURANCE

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

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
  2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
  3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers 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. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.6 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 5.7.
- c. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.6 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.
- d. If Contractor requests in writing that other special insurance be

included in the property insurance policies provided under Paragraph 5.6, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### 5.7 WAIVER OF RIGHTS

- a. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.6 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- b. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:
  1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
  2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.5, after Substantial Completion pursuant to Paragraph 14.4, or after final payment pursuant to Paragraph 14.7.
- c. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.7.b shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, partners, employees, agents, consultants and

subcontractors of each and any of them.

#### 5.8 RECEIPT AND APPLICATION OF INSURANCE PROCEEDS

- a. Any insured loss under the policies of insurance required by Paragraph 5.6 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 5.8.b. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- b. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

#### 5.9 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 PART 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by Paragraph 2.1.b. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### 5.10 PARTIAL UTILIZATION, ACKNOWLEDGEMENT 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 14.5, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.6 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.



## PART 6 CONTRACTOR'S RESPONSIBILITY

## 6.1 SUPERVISION AND SUPERINTENDENCE

- a. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- b. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor. Provide a resume showing a minimum of five years experience in constructing similar projects.

## 6.2 LABOR: WORKING HOURS

- a. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- b. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.
- c. The Contractor shall not interrupt Owner's operations without prior written approval.

## 6.3 SERVICES, MATERIALS AND EQUIPMENT

- a. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- b. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and

equipment.

- c. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 6.4 PROGRESS SCHEDULE

- a. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.7 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 2.7) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of PART 12. Adjustments in Contract Times may only be made by a Change Order.

#### 6.5 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 6.5.a.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - 1. it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2. it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,
      - 3. it has a proven record of performance and availability of responsive service; and

- b. Contractor certifies that, if approved and incorporated into the Work:
  1. there will be no increase in cost to the Owner or increase in Contract Times, and
  2. it will conform substantially to the detailed requirements of the item named in the Contract Documents.
2. Substitute Items
  - a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.5.a.1, it will be considered a proposed substitute item.
  - b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
  - c. The requirements for review by Engineer will be as set forth in Paragraph 6.5.a.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.
  - d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
    1. shall certify that the proposed substitute item will:
      - a. perform adequately the functions and achieve the results called for by the general design,
      - b. be similar in substance to that specified, and
      - c. be suited to the same use as that specified;
    2. will state:
      - a. the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;
      - b. whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
      - c. whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
    3. will identify:

- a. all variations of the proposed substitute item from that specified , and
    - b. available engineering, sales, maintenance, repair, and replacement services;
  - 4. and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,
  - b. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.5.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 6.5.a and 6.5.b. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
  - d. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
  - e. Engineer's Cost Reimbursement: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.5.a.2 and 6.5.b whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
  - f. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.
- 6.6 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 6.6.b), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- b. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- c. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor
  - 2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- d. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- e. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- f. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- g. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.6, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives

all rights against Owner, Contractor, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.7 PATENT FEES AND ROYALTIES

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

#### 6.8 PERMITS

- a. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 6.9 LAWS AND REGULATIONS

- a. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- b. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other

professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.3.

- c. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.5.

#### 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.
- b. The Contractor shall furnish the Owner with records and appropriate affidavits of all state sales tax paid on items which are eligible for tax refund to the Owner.

#### 6.11 USE OF SITE AND OTHER AREAS

- a. Limitation on Use of Site and Other Areas
  1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
  2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
  3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
- b. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from

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

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

#### 6.12 RECORD DOCUMENTS

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

#### 6.13 SAFETY AND PROTECTION

- a. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- b. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- c. Contractor shall comply with applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.



- d. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- c. All damage, injury, or loss to any property referred to in Paragraph 6.13.a.2 or 6.13.a.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or , or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- f. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.7.b that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 SAFETY REPRESENTATIVE

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

#### 6.15 HAZARD COMMUNICATION PROGRAMS

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

#### 6.16 EMERGENCIES

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

#### 6.17 SHOP DRAWINGS AND SAMPLES

- a. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.7). Each submittal will be identified as Engineer may require.

##### 1. Shop Drawings

- a. Submit number of copies specified in the General Requirements.
  - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.d.
2. Samples: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.
    - a. Submit number of Samples specified in the Specifications.
    - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.d.
  - b. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals , any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
  - c. Submittal Procedures
    1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:
      - a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
      - b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
      - c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and
      - d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.
    2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
    3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a

specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

d. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.c.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.c.1.

e. Resubmittal Procedures

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

6.18 CONTINUING THE WORK

- a. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.4 or as Owner and Contractor may otherwise agree in writing.

6.19 CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE

- a. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

- b. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  - 2. normal wear and tear under normal usage.
- c. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
  - 1. observations by Engineer;
  - 2. recommendation by Engineer or payment by Owner of any progress or final payment;
  - 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  - 4. use or occupancy of the Work or any part thereof by Owner;
  - 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
  - 6. any inspection, test, or approval by others; or
  - 7. any correction of defective Work by Owner.

#### 6.20 INDEMNIFICATION

- a. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- b. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.a shall not be limited in any way by any limitation on the amount or type of

damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- c. The indemnification obligations of Contractor under Paragraph 6.20.a shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:
  - 1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 6.21 DELEGATION OF PROFESSIONAL DESIGN SERVICES

- a. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- b. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- c. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- d. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.d.1.
- e. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## PART 7 OTHER WORK AT THE SITE

## 7.1 RELATED WORK AT SITE

- a. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
  1. written notice thereof will be given to Contractor prior to starting any such other work; and
  2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.5.
- b. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- c. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this PART 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.

## 7.2 COORDINATION

- a. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
  1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  2. the specific matters to be covered by such authority and responsibility will be itemized; and
  3. the extent of such authority and responsibilities will be provided.

- b. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

### 7.3 LEGAL RELATIONSHIPS

- a. Paragraphs 7.1.a and 7.2 are not applicable for utilities not under the control of Owner.
- b. Each other direct contract of Owner under Paragraph 7.1.a shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.
- c. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

## PART 8 OWNER'S RESPONSIBILITIES

### 8.1 COMMUNICATIONS TO CONTRACTOR

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

### 8.2 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.

### 8.3 FURNISH DATA

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

### 8.4 PAY WHEN DUE

- a. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.2.c and 14.7.c.

### 8.5 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 4.1 and 4.5. Paragraph 4.2 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.

### 8.6 INSURANCE

- a. Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in PART 5.

## 8.7 CHANGE ORDERS

- a. Owner is obligated to execute Change Orders as indicated in Paragraph 10.3.

## 8.8 INSPECTIONS, TESTS AND APPROVALS

- a. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.3.b.

## 8.9 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.
- b. Owner has the right to limit or schedule, with Contractor's input, any work that may affect operation of Owner's facilities.

## 8.10 UNDISCLOSED HAZARDOUS ENVIRONMENTAL CONDITION

- a. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.6.

## 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.

## PART 9 ENGINEER'S STATUS DURING CONSTRUCTION

## 9.1 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.

## 9.2 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 9.9. 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.

#### 9.3 PROJECT REPRESENTATIVE

- a. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.9. 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.

#### 9.4 AUTHORIZED VARIATIONS IN WORK

- a. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.5.

#### 9.5 REJECTING DEFECTIVE WORK

- a. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.4, whether or not the Work is fabricated, installed, or completed.

#### 9.6 SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS

- a. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- b. In connection with Engineer's authority, and limitations thereof, as to

design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

- c. In connection with Engineer's authority as to Change Orders, see PART 10, 11, and 12.
- d. In connection with Engineer's authority as to Applications for Payment, see PART 14.

#### 9.7 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 10.5.

#### 9.8 DECISIONS ON REQUIREMENTS OF CONTRACT DOCUMENTS AND ACCEPTABILITY OF WORK

- a. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- b. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.5. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.5.b.
- c. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.5.
- d. When functioning as interpreter and judge under this Paragraph 9.8, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

#### 9.9 LIMITATIONS ON ENGINEER'S AUTHORITY AND RESPONSIBILITIES

- a. Neither Engineer's authority or responsibility under this PART 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 14.7.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 9.9 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

#### PART 10 CHANGES IN THE WORK: CLAIMS

##### 10.1 AUTHORIZED CHANGES IN THE WORK

- a. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- b. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.5.

##### 10.2 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 3.4, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.4.b.

##### 10.3 EXECUTION OF CHANGE ORDERS

- a. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
  - 1. changes in the Work which are: (i) ordered by Owner pursuant to

Paragraph 10.1.a, (ii) required because of acceptance of defective Work under Paragraph 13.8.a or Owner's correction of defective Work under Paragraph 13.9, 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 10.5; 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.

#### 10.4 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.

#### 10.5 CLAIMS

- a. Engineer's Decision Required: All Claims, except those waived pursuant to Paragraph 14.9, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- b. Notice: Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.1.b. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.2.b. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- c. Engineer's Action: Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,
  2. approve the Claim, or
  3. notify the parties that the Engineer is unable to resolve the Claim. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- d. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- e. Engineer's written action under Paragraph 10.5.c or denial pursuant to Paragraphs 10.5.c.3 or 10.5.d will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in PART 16 within 30 days of such action or denial.
- f. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.5.

#### PART 11 COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

##### 11.1 COST OF THE WORK

- a. Costs Included: The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.1.b, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.1.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 11.1.
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 5.6.d), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone

directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

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

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

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

- b. Costs Excluded: The term Cost of the Work shall not include any of the following items:
1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.1.a.1 or specifically covered by Paragraph 11.1.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 11.1.a and 11.1.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 12.1.c.
- d. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.1.a and 11.1.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.

#### 11.2 ALLOWANCES

- a. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- b. Cash Allowances
  1. Contractor agrees that:
    - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
    - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- c. Contingency Allowance
  1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- d. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.3 UNIT PRICE WORK

- a. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- b. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.7.
- c. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- d. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.5 if:
  1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and



2. there is no corresponding adjustment with respect any other item of Work; and
3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

PART 12 CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.1 CHANGE OF CONTRACT PRICE

- a. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.5.
- b. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
  1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.3); 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 12.1.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 12.1.b.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.1) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.1.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 11.1.a.1 and 11.1.a.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 11.1.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 12.1.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 11.1.a.1 and 11.1.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 11.1.a.4, 11.1.a.5, and 11.1.b;

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

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.1.c.2.a through 12.1.c.2.e, inclusive.

## 12.2 CHANGE OF CONTRACT TIMES

- a. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.5.
- b. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this PART 12.

## 12.3 DELAYS

- a. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.2.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 PART 7, fires, floods, epidemics, abnormal weather conditions, or acts of God. The Supplementary Conditions indicate the average number of days per month in which precipitation is in excess of 0.1 inches per day. The completion time will not be extended for precipitation unless the number of days per month exceed the number of days indicated in the Supplementary Conditions.
- b. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by PART 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- c. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or

other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.3.c.

- d. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- e. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

##### 13.1 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 PART 13.

##### 13.2 ACCESS TO WORK

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

##### 13.3 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 13.3.c and 13.3.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 13.4.c; and
  - 3. as otherwise specifically provided in the Contract Documents.
  - 4. testing lab brought onto the site prior to completion of the

portion of the work to be tested, the Contractor shall have all work in place and approved by the Engineer prior to bringing testing lab to the site.

- 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 13.3.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.

#### 13.4 UNCOVERING WORK

- a. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- b. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- c. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.5.
- d. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering,

exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.5.

#### 13.5 OWNER MAY STOP THE WORK

- a. If the Engineer deems 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 direct the Engineer to 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.

#### 13.6 CORRECTION OR REMOVAL OF DEFECTIVE WORK

- a. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- b. When correcting defective Work under the terms of this Paragraph 13.6 or Paragraph 13.7, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

#### 13.7 CORRECTION PERIOD

- a. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.a is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  1. repair such defective land or areas; or
  2. correct such defective Work; or
  3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

- b. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- c. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- d. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.7, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- e. Contractor's obligations under this Paragraph 13.7 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.

#### 13.8 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 10.5. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

#### 13.9 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 13.6.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

- b. In exercising the rights and remedies under this Paragraph 13.9, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- c. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.9 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.5. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- d. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.9.

#### PART 14 PAYMENTS TO CONTRACTOR AND COMPLETION

##### 14.1 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.

##### 14.2 PROGRESS PAYMENTS

- a. Applications for Payments
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens

and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

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

b. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations 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 9.7, and to any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
  - b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of



recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

- a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.2.b.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.9; or
  - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.2.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 14.2.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 14.2.b.5.a through 14.2.b.5.c or Paragraph 15.2.a.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.
  3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.2.c.1.

#### 14.3 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.

#### 14.4 SUBSTANTIAL COMPLETION

- a. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- b. Promptly after Contractor's notification, , Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- c. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- d. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- e. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

#### 14.5 PARTIAL UTILIZATION

a. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.6 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.

#### 14.7 FINAL PAYMENT

##### a. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.4.b.7;
  - b. consent of the surety, if any, to final payment;
  - c. a list of all Claims against Owner that Contractor believes are unsettled; and
  - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.7.a.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

##### b. Engineer's Review of Application and Acceptance

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the

same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.9. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

c. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and, will be paid by Owner to Contractor.

14.8 FINAL COMPLETION DELAYED

- a. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.1, 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.

14.9 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 14.6, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
  2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

PART 15 SUSPENSION OF WORK AND TERMINATION

15.1 OWNER MAY SUSPEND WORK

- a. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an extension of the Contract Times directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.5.

## 15.2 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 2.7 as adjusted from time to time pursuant to Paragraph 6.4);
  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 15.2.a occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
  1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),
  2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and
  3. complete the Work as Owner may deem expedient.
- c. If Owner proceeds as provided in Paragraph 15.2.b, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.
- d. Notwithstanding Paragraphs 15.2.b and 15.2.c, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

- e. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- f. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.1.a, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.2.b, and 15.2.c.
- g. The Contractor acknowledges and agrees that if any court rules that termination by the Owner was wrongful termination, such action by the Owner shall be deemed a termination for convenience and the Contractor shall only be entitled to recover legitimate expenses as disclosed in Paragraph 15.3.

#### 15.3 OWNER MAY TERMINATE FOR CONVENIENCE

- a. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
  - 4. reasonable expenses directly attributable to termination.
- b. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### PART 16 DISPUTE RESOLUTION

##### 16.1 METHODS AND PROCEDURES

- a. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.5 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.5.e.

- b. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- c. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.5.c or a denial pursuant to Paragraphs 10.5.c.3 or 10.5.d shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
  - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or
  - 2. agrees with the other party to submit the Claim to another dispute resolution process, or
  - 3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

#### PART 17 MISCELLANEOUS

##### 17.1 GIVING NOTICE

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

##### 17.2 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.

##### 17.3 CUMULATIVE REMEDIES

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

##### 17.4 SURVIVAL OF OBLIGATIONS

- a. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents,



will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.5 CONTROLLING LAW

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

17.6 HEADINGS

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

-- End of Section --

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SUPPLEMENTARY CONDITIONS

PART 1 GENERAL

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract 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.

1.1 Related Documents

Drawings and general provisions of Contract, including General Conditions and other Division-1 Specification Sections, apply to this Section.

1.2 Insurance Requirements

The limits of liability for the insurance required by Part 5 of the General Conditions shall provide the following coverages for not less than the following amounts or greater where required by Laws and Regulations:

Workers' Compensation

- |  |  |
|--|--|
| (1) State:                                     | Statutory  |
| (2) Applicable Federal<br>(e.g. Longshoreman's | Statutory  |
| (3) Employer's Liability                       | \$1,000,000 per occurrence<br>\$1,000,000 per person |

Contractor's Liability Insurance, which shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

- |   |             |
|---|-------------|
| (1) General Aggregate<br>Except Produces -- Completed Operations  | \$1,000,000 |
| (2) Products -- Completed Operations Aggregate  | \$1,000,000 |
| (3) Personnel and Advertising<br>Injury (Per Person/Organization)   | \$1,000,000 |
| (4) Each Occurrence<br>(Bodily Injury and Property Damage)  | \$1,000,000 |
| (5) Property Damage liability insurance will provide Explosion,<br>Collapse and Underground coverages where applicable. |             |
| (6) Excess Liability<br>General Aggregate   | \$2,000,000 |
| Each Occurrence   | \$1,000,000 |

Automobile Liability:

- |                    |             |
|--------------------|-------------|
| (1) Bodily Injury: |             |
| Each Person        | \$1,000,000 |
| Each Accident      | \$1,000,000 |
| Property Damage    |             |
| Each Accident      | \$1,000,000 |

- (2) Combined Single Limit (Bodily Injury and Property Damage):  
     Each Accident \$1,000,000

Contractual Endorsement: The Contractual Liability coverage shall provide coverage for not less than the following amounts:

- (1) General Aggregate \$1,000,000
- (2) Each Occurrence  
     Bodily Injury and Property Damage \$1,000,000

Additional Insureds:

Additional insureds on all insurance shall be listed as follows:

**McIntosh County, Georgia**  
 Brennan Jones Engineering Associates, LLC

1.3 Normal Weather Conditions

Average Number of Days in which precipitation is in excess of 0.10 inches per day is tabulated below for the region in which the project is located. Completion time will not be extended for normal weather conditions. The time for completion as stated in the Contract Documents includes due allowance for calendar days on which work cannot be performed. For the purpose of this Contract, the Contractor agrees that he may expect to lose calendar days due to weather in accordance with the following table:

Jan.	9 days	May	8 days	Sep.	10 days
Feb.	8 days	June	12 days	Oct.	6 days
Mar.	9 days	July	13 days	Nov.	7 days
Apr.	7 days	Aug.	13 days	Dec.	8 days

Also, the Contractor agrees that the measure of extreme weather during the period covered by this Contract shall be the number of days in excess of those shown for each month in the table above, in which precipitation exceeded 0.10 inch and the average temperature failed to exceed 40 degrees F., averaged from the Savannah International Airport weather station in Savannah, Georgia. This is the same source of data used to determine normal weather losses. If the total accumulated number of calendar days lost to weather, from the start of work until the completion of project exceeds that total accumulated number to be expected for the same period from the table above, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost. Request for extension in contract time shall be done in accordance with the General Conditions.

No change in Contract Sum will be authorized because of adjustments of Contract Time due to Owner's acceptance of Contract Claims for adjustments to Time due to abnormal weather conditions.

1.4 Geotechnical Investigation

A geotechnical investigation and engineering report entitled "Report of Preliminary Geotechnical Exploration, McIntosh County Fire Station Townsend, McIntosh County, Georgia" dated March 12, 2018, completed by Contour Engineering, LLC for McIntosh County. This geotechnical engineering report was relied upon for design of project. The referenced report will be made available to bidders in Adobe Acrobat format upon receipt of written request from the bidder.

PART 2 PRODUCTS

Not Applicable

PART 3 EXECUTION

Not Applicable

-- End of Section --