

Request for Proposals (RFP)

To Provide

CONSTRUCTION MANAGER AT RISK SERVICES

For the

***LOUISVILLE DOWNTOWN STREETScape
PROJECT – PHASE 1***

RFP



February 14, 2025

For Submittal and Presentation

To

The Selection Committee

City of Louisville

Department of Public Works

Engineering Division

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I. Project Identification

- A. The City of Louisville (City) is soliciting proposals for selection of a Construction Manager at Risk (CMAR) for Phase 1 of the Louisville Downtown Streetscape Project (Project).
- B. The Downtown Vision Plan (Concept Plan) is provided as **EXHIBIT A** and is available for use in preparing proposals.
- C. The City intends to contract with the selected CMAR firm to assist the City and RVi Planning + Landscape Architecture, Inc. (Engineer) in finalizing the design, and developing the final Construction Documents and final Guaranteed Maximum Price (GMP). It is the intent of the City to award a preconstruction phase services contract to the selected CMAR firm and a separate construction phase contract after agreement on the final GMP.
- D. The Request for Proposal (RFP) will be advertised and sent to interested Contractors. The City will rank the received proposals in the order of “best value” based on the

evaluation criteria and ranking evaluation table provided at the end of this RFP. The City may choose to interview the top-ranked CMAR firms, however, the selection could also be made based on Proposals only.

II. Receipt of Proposals

- A. The City will receive electronic Proposals from qualified CMAR firms for the Project until 2:00 PM MDT on March 12, 2025. Any Proposal received after the above stated time will not be accepted. All Proposals must be received on or before the above date and time. Sole responsibility rests with the Contractor to see that their Proposal is received on time.
- B. Emailed copies of each Proposal are required. Dropbox (or similar) links will be acceptable due to potential file size limitations with email. Electronic submittals must be received in the e-mail box listed below. Submittals sent to any other e-mail box will NOT be forwarded or accepted. Please use the Delivery Receipt option to verify receipt of your email.

Email: jjefferies@louisvilleco.gov reference as "Louisville Downtown Streetscape – CMAR Proposal" in the subject line. If there are concerns that proposal was not received you can reach out to Jordan Jefferies directly at 303-335-4684 to confirm receipt.

- C. Submittal Requirements – Limit the TOTAL LENGTH of the core proposal to ten (10) pages maximum, which does not include the cover letter, index and/or table of contents, front and back covers, title page, separation tabs, and/or key staff resumes (keep resumes to 1 page each, maximum). Proposers must use 10 point font, or larger. Use of figures, photographs, or other graphics within the page constraints indicated is up to the discretion of the proposer. Up to two (2) 11” x 17” pages may be included in the proposal, to be included in the ten page maximum. The City cannot guarantee review of voluminous firm-specific or other information contained as an appendix. The qualified firm’s proposal shall include at a minimum the information provided in Section IX “Required Proposal Content” of this RFP.
- D. Proposal Duration – This Proposal shall be guaranteed for 90 days.
- E. Pre-Proposal Meeting – A Mandatory Pre-Proposal Meeting will be held at 11AM MST on February 26, 2025, via Microsoft Teams at the link provided below. The purpose of the Pre-Proposal Meeting is to present the project scope, budget, and schedule, and to answer questions from interested parties.

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 229 638 912 900

Passcode: zT3qj6t3

Alternate meeting link: https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzFjMzk2YjktMmVINS00NWQ3LWI5YTEtYzJiOTU3ZjFkN2E3%40thread.v2/0?context=%7b%22Tid%22%3a%22bdc34c2-e919-4b54-b6ba-01080ac35832%22%2c%22Oid%22%3a%22352b7264-5c1d-49b4-b53a-83ada25517d5%22%7d

- F. Proposers are required to prequalify as a contractor with the City of Louisville if not already prequalified. Prequalification forms can be found at the following link: <https://www.louisvilleco.gov/home/showpublisheddocument/40677/638394479958530000>. The completed form can be submitted via email to pworks@louisvilleco.gov and shall be submitted no later than March 10, 2025.
- G. Point of Contact – The City designates the following person as its representative and Point-of-Contact for this RFP. Respondents shall direct all questions in writing regarding this RFP, including questions, to the following Point-of-Contact:

Jordan Jefferies, P.E.
Assistant City Engineer
City of Louisville
(303) 335-4684
jjefferies@louisvilleco.gov

III. Description of Work

- A. The Work will include all necessary labor, supervision, equipment, tools and materials for the construction of the Downtown Streetscape and Urban Landscaping Improvements. Work includes, but is not limited to the following:
 - 1. Construction of the Short-term improvements (Phase 1) identified in the Concept Plans. The Concept Plans will be modified throughout the design and value engineering process to adjust the scope as necessary to fit within the City's available budget.
 - 2. Phase 1 improvements will be divided into two design packages, Phases 1A and 1B, to allow for early construction of some items. The improvements anticipated for each phase are as follows:
 - a. Phase 1A
 - a. South Street conversion to diagonal parking
 - b. Wayfinding signage
 - c. Early-action in Phase 1B Areas
 - b. Phase 1B
 - a. Steinbaugh Plaza Improvements
 - b. Front Street Improvements
 - c. Main Street Improvements
- B. The overall project schedule is included as **Exhibit C**.

- C. The Work is located in downtown Louisville where there are numerous businesses and frequent downtown events. The City's goal is to minimize disruptions and access to local businesses and to maintain downtown events to the extent possible. Communication and coordination with local businesses and event coordinators will be key to project success. Scheduling, phasing, and sequencing input will be critical to minimize disruptions downtown and provide adequate notice of construction impacts to downtown stakeholders. A CMAR public liaison will be required to coordinate with downtown stakeholders.
- D. The Concept Plans for the Louisville Downtown Streetscape Project are attached as **EXHIBIT A** to this RFP.
- E. Revisions to the design plans will be implemented during the design phase of the CMAR contract to refine the design, incorporate constructability modifications, and include value engineered items to arrive at a final GMP and construction documents.
- F. For the proposal, the CMAR firm shall complete the proposal form attached as **EXHIBIT D** and list the proposed major subcontractors and suppliers attached as **EXHIBIT E** of this RFP. More than one subcontractor may be listed. City reserves the right to reject or accept subcontractors.

IV. Preconstruction Phase Services

- A. The selected CMAR firm will be provided separate contracts for preconstruction phase services and construction phase services. The preconstruction phase service agreement (**EXHIBIT F**) will provide for specific services and compensation for project team activities other than on-site construction work as listed below. The selected CMAR firm will participate as a member of the project team in evaluating alternative layouts, construction materials, and sequencing of construction which may affect the selection, design, arrangement, and cost of project components. The cost of the preconstruction contract will be based upon a final negotiated scope and paid on a time and reimbursable direct cost basis. Required services include:
 - 1. Provide ongoing GMP development throughout all design phases, including updates with proposed value engineered options. Provide cost estimates at design milestones.
 - 2. Participate in bi-weekly design team meetings and monthly stakeholder meetings.
 - 3. Participate and assist City in outreach to affected businesses and event coordinators prior to construction.
 - 4. Perform constructability reviews and plan reviews at design milestones.
 - 5. Assist in development of project phasing plan
 - 6. Provide input on construction methods and strategic construction sequencing to minimize disruptions to downtown businesses and special events.
 - 7. Develop detailed construction schedule.

8. Develop construction quality management plan.
9. Review proposals from material providers and vendors and provide input to the team on selection of materials and potential long-lead items.
10. Identify appropriate subcontractors and material suppliers that will be invited to participate/bid in pricing and/or construction of the project. Suitability will be determined by the City project manager, the Engineer's project manager, and the CMAR project manager.
11. Develop and maintain project risk register outlining probability and impact of identified risks. Coordinate with City and Engineer in development of risk register and manage throughout design phase. Provide mitigation strategies for each identified risk.
12. Participate as a member of the project team and provide support for the application and approvals of required permits for design and construction, as needed.
13. When the City, the Engineer, and the CMAR agree that the project has been designed to a sufficient level of detail to allow the CMAR to accurately price the construction of the project, construction contract price negotiations will commence to develop a not-to-exceed GMP Contract. Costs will be verified with a third-party estimator and "open book" cost model price negotiations will be required through the process. CMAR will be required to reveal and defend its detailed pricing breakdowns including labor, materials, equipment, subcontractor and supplier quotes, mobilization, overhead, mark-up, and profit. Upon acceptance of the CMAR's final GMP, the City will enter into a construction contract with the CMAR. At any time, if the City determines that an agreement cannot be successfully negotiated, the City reserves the right to terminate construction contract negotiations and the preconstruction phase services contract and procure the construction of the project by other means.
14. The CMAR firm may be requested to commence construction or procurement in phases before Construction Drawings and Specifications are completed. Therefore, pricing of any individual tasks immediately prior to construction shall be substantiated on a GMP basis with the predetermined parameters, processes, and procedures. Allowances for certain tasks or material items may be necessary.
15. Other required services for project completion outlined in the Design Phase Services CMAR contract and general/supplemental conditions.

V. Construction Phase Services

- A. Construction work will be contracted using an EJCDC Stipulated Price Agreement (**EXHIBIT G**) based on the agreed-upon final GMP. The CMAR shall be fully responsible for any costs associated with completing the work above the negotiated GMP, unless there is an agreed upon change in scope. The proposed services and activities are listed but not limited to below. The executed construction agreement between the City and CMAR firm along with the GMP shall include the following construction tasks: All necessary labor, supervision, equipment, tools, and materials for constructing the City of Louisville Downtown Streetscape Project improvements per the final Construction Documents. Additional construction phase services include:

1. Project management and superintendent services

2. Subcontractor coordination
3. Provide a dedicated CMAR Community Liaison to coordinate with downtown businesses, residents, and event coordinators to minimize construction impacts.
4. Provide or assist City in providing real-time public notifications (SMS messages, website updates, etc.) and construction updates.
5. Develop a construction sequencing plan to minimize disruptions to downtown businesses and events.
6. Coordination with RTD, BNSF, and any other impacted agencies during construction.
7. Construction schedule updates and tracking.
8. Self-performed work as stipulated in the proposal response.
9. Preparing monthly payment applications.
10. Open Book Accounting: Prepare all project job cost back-up documentation that will be included with each monthly pay application. Cost-tracking software with shared access for the City is preferred. An open book job cost/variance report will be maintained by the contractor showing project savings and overruns for every budget line item. The report will include an overall summary page showing total Job-to-Date costs with any savings or overruns. Ongoing project savings will not include the GMP contingency amount. Project savings may be maintained by the contractor as internal contingency until the project is complete. This information will always be open and known to the entire project team. Project savings generated through contract buyout or scope reduction/elimination, however, will immediately be moved into project contingency. At project completion all project savings will revert to the City along with any remaining contingency with a deductive change order.
11. Organizing weekly (or as required) construction progress meetings.
12. Responsible for all temporary construction facilities, job site management, clean-up, access, deliveries, and safety
13. Request for Information (RFI) tracking and management, Potential Contingency Item, Work Change Directives, Change Order preparation, coordination, and execution
14. Quality Assurance / Quality Control
15. Close-out documentation (O&M manuals, As-built drawings/documents, Warranty, Lien release and Bonds as required)
16. Project permitting through the City, Boulder County, and/or CDPHE as required.
17. Coordination of other permitting as required
18. Maintenance of performance and payment bonds during the project execution and maintenance of the performance bond through the warranty period following substantial completion
19. Maintenance of necessary and specified insurances during the project implementation and execution
20. Other required services for project completion outlined in the Agreement and General/Supplemental conditions in **EXHIBIT G**.
21. Develop and maintain project risk register outlining probability and impact of identified risks. Provide mitigation strategies for each identified risk. Manage risk as appropriate throughout construction phase.

22. Contingency management: Project Contingency will be its own separate line item in the GMP. It shall not be hidden in the body of the GMP. It will be a separate line item in the *Schedule of Values (SOV)* for City pay applications. Use of contingency funds will NOT be at the sole discretion of the contractor. Contractor will create and track a Potential Contingency Item (PCI) log that will be tracked and reviewed by the project team. A Contingency Request must be submitted to the engineer and City for approval before including in the application for payment. Any unused contingency amount at project completion will revert to the City with a deductive change order to the prime contract amount. Contingency shall be itemized in the GMP and based on risks identified in the project risk register.

VI. Scope of Work by Engineer

- A. As part of the project team, the Engineer (and its subconsultants) will be responsible for coordinating the design, progress review(s), preparing a coordinated set of Construction Documents, and limited construction phase engineering services. Specifically, the Engineer will provide the following services as follows:

1. Preconstruction Phase:

- a. Organize project kickoff meeting, subsequent preconstruction progress meetings, and produce updated drawings and specifications from the Concept Plan to develop Construction Documents.
- b. Perform data collection and site investigation work including survey, geotechnical, subsurface utility engineering, etc.
- c. Develop, track, and update baseline design schedule.
- d. Initiate communications and coordination with BNSF railroad
- e. Participate in stakeholder advisory committee meetings
- f. Present detailed project scope, request and review CMAR's GMP, participate in GMP negotiations and constructability reviews, as required.
- g. Coordinate design reviews, apply for and obtain approval of any applicable permits, and develop plans and specifications for final construction approval with the City.

2. Construction Phase:

- a. Attend all weekly, or periodic construction progress meetings
- b. Part-time construction observation services
- c. Produce Construction Documents based on final GMP and value engineered items
- d. Review schedules, pay applications and change orders
- e. Review submittal and O&M data
- f. Provide engineering support for RFI responses
- g. Recommend Substantial and Final Completion dates
- h. Other related duties to service contract between the City and CMAR firm

VII. Project Schedule

- A. The project schedule is generally outlined in Table 1 below. A schedule is also provided as **Exhibit C**.

TABLE 1: PROJECT SCHEDULE

Task Description	Date
Mandatory Pre-Proposal Meeting	February 26, 2025
Questions Due	February 28, 2025
Proposal Due Date	March 12, 2025 @ 2PM MST
Short list notification	March 14, 2025
CMAR interviews (if required)	March 21, 2025
Anticipated Notice of Award for Design Phase Services	March 21, 2025
Initial GMP – Phase 1A	June 27, 2025
Final GMP – Phase 1A	July 25, 2025
Anticipated Notice to Proceed for Construction Phase Services – Phase 1A	September 17, 2025
Anticipated Substantial Completion – Phase 1A	June 2026
Initial GMP – Phase 1B	May 2026
Final GMP – Phase 1B	June 2026
Anticipated Notice to Proceed for Construction Phase Services – Phase 1B	August 2026
Anticipated Substantial Completion – Phase 1B	July 2027
Anticipated Project Final Completion	August 2027

VIII. Conditions of Proposal

- A. All proposing CMAR firms shall comply with the conditions and requirements of this RFP
- B. The proposal must be signed by an authorized official from the proposing entity
- C. Pricing in the proposal must be valid for ninety (90) days after the proposal due date
- D. The City reserves the right to reject any and all proposals or any part thereof. This right further allows the City to award the proposal to the most responsive and responsible proposing CMAR firm as deemed in their best interest

- E. The City may extend invitations to interview selected firms during the selection process. The interview format will be shared upon invitation, but generally requires presentation of the proposal materials and an open session for questions and answers. If invited to the interview process, the Contractor shall bring a separate, sealed envelope with the following information included:
 - 1. Recent financial statement
 - 2. Bonding company reference – Provide the name, address, and phone number of the firm’s bonding agent. Provide a letter from the bonding agent indicating the firm’s bonding capacity is adequate to undertake this work.
 - 3. Insurance company – Provide the name, address, and phone number of the firm’s insurance agent(s). Provide certificate of insurance outlining coverage and policy limits.
- F. The selected CMAR firm will be required to enter a contract with the City for both Preconstruction Services and Construction Services separately.
- G. Proposals shall include the information described below and will be evaluated by a selection committee made up of internal City staff.
- H. In submitting this Proposal, the CMAR firm represents that:
 - 1. CMAR firm has examined and carefully studied the attached concept plan and, if applicable, any additional Addenda.
 - 2. CMAR firm has given written notice of all conflicts, error, ambiguities, or discrepancies that CMAR firm has discovered in this RFP and attachments.
 - 3. The City is tax exempt.

IX. Required Proposal Content

A. Cover Letter

- 1. Introduction, legal name of CMAR firm, contact person for this project, phone number, e-mail address, street, and mailing addresses

B. Project Approach and Scope of Work

- 4. Suggested approach to communication and coordination with downtown stakeholders to minimize impacts to residents, businesses, and events. Provide input on construction phasing, construction sequencing, and means and methods
- 5. Value engineering for the most cost-effective solutions that maintain durability and quality.
- 6. Input on factors such as cost, ease of installation, delivery schedule, quality, potential contracting or construction issues

C. CMAR Preconstruction Phase Cost Proposal

1. The final scope of work will be determined as part of the CMAR Contract negotiations. The City's total available budget for design, preconstruction and construction of Phase 1 of the Downtown Streetscape Project is \$9M. It is the City's intention to minimize overall costs to complete the project. Provide a preconstruction phase cost proposal based on the following scope:
2. Preconstruction Phase Service Cost:
 - a. Provide hourly rates for the proposed key project staff for assistance to the project team during the preconstruction phase of the project. Present these rates in a unit pricing format for each of the CMAR's representatives, staff members, and/or subcontractors that are proposed to participate as members of the project team in the preconstruction phase activities. Summarize costs in a fee table and complete the proposal form in **Exhibit D**.
 - b. Provide total preconstruction phase budget based on Preconstruction Phase Services described above and the following:
 - i) Project kick-off meeting: One 2-hr meeting
 - ii) Project Design / Progress meetings or Conference calls: anticipate biweekly 1-hr meetings during the design phase
 - iii) Design milestone reviews meetings: anticipate four design milestone review meetings
 - iv) Proposed required hours and cost for GMP Development, constructability reviews, and value engineering
 - v) Other costs that the CMAR considers are inclusive of preconstruction phase services; e.g. reproductions, travel time, etc. Identify any additional costs in the design phase services cost proposal

D. Value Engineering and Innovative Ideas

1. Creative value engineering suggestions for project delivery to keep project within budget.
2. The conceptual level cost estimate for the Phase 1 Downtown Streetscape & Urban Landscaping improvements is approximately \$14M, so there will be significant need for value engineering while maintaining the vision for the project.

E. Project Schedule

1. Provide a proposed project schedule; include major activities for each task for design phase, GMP preparation and review, GMP package preparation, equipment procurement, construction, programming, testing, and startup. Identify critical path elements of the project in the schedule as well as the total proposed construction phase duration.

F. Project Team

1. List current projects under construction and include City's name and contact information, contract price, percent complete, scheduled completion date and brief description of the work
2. List of CMAR's key personnel assigned to the project

- a. It is expected that the CMAR's key personnel will remain throughout the preconstruction and construction phase of the project, unless mutually acceptable arrangements are made otherwise.
 3. Organizational Chart of all management and subcontractors
 4. Resumes of individuals proposed to fill key positions
 5. Highlight recent projects, completed in the last five years, highlighting any partnering or Construction Management experience.
- G. Quality Assurance and Quality Control
1. High quality construction elements including the overall visual aesthetic is a primary project goal. Provide details on your firm's quality assurance and quality control program. Explain how your team administers a quality management plan during construction, how performance measures are documented, and how quality issues are addressed. Provide examples of when your firm exceeded quality standards, gained industry recognition, or received quality awards. Describe how your quality management plan relates to your subcontractor's work and how you ensure quality work from all subcontractors.
- H. Safety
1. Provide the firm's OSHA reportable accident rate and current workman's compensation insurance multiplier for the last three years. Address your company's safety program and any additional information that would be useful in showing your approach to a safe work site
- I. Subcontractors
1. Based on the description of the work in this request, describe subcontractors that you have working relationships with that might be used on this project. A pre-approved list of subcontractors that may be used on this project is preferred.
 2. Provide past performance data for major subcontractors identifying any key projects completed in the past 3 years.
- J. Financial Statement
1. Provide a recent financial statement including balance sheet and income statement showing:
 - a. Current assets
 - b. Other assets
 - c. Current liabilities
 - d. Other liabilities
 - e. Fixed assets and equipment
 - f. Declare conflicts of interest
- K. Banking Reference
1. Provide the name, address and phone number for a banking reference
- M. Insurance
1. Provide a certificate of insurance outlining coverage and policy limits

N. Statement of Qualifications

1. Similar Project Experience
 - a. Provide a minimum of three examples of successful projects that have been delivered within a fixed budget, preferably with similar scope and in Colorado
2. CMAR firm to provide a list and contact information for a minimum of three (3) projects, located in the State of Colorado within the past five (5) years, where the proposing organization assumed the role of CMAR or the lead partner in a design-build team.
3. CMAR firm to provide three (3) references for similar municipal or streetscape projects completed within the last five (5) years. Higher weighting will be given to referenced projects that have been delivered using the CMAR or the design / build approach.
4. CMAR firm to declare any information relating to a conflict of interest for the project.
5. CMAR firm to provide a description of any involvement in any lawsuits in the past three (3) years, liens that are outstanding, and any pending claims.
6. Open book accounting will be required for the construction phase of the project. CMAR firm to provide example of “Job Cost/Variance Report” showing project under/over budget items monthly that will be required with each pay application. The report must show ongoing project costs for labor, permanent material, expendable material, equipment, and subcontract. Invoices, timesheets etc. may also be required at the City’s request.
7. References
 - a. Provide three client references (project name, contact person and phone number) for projects that are similar in size and scope, and best demonstrates the firm’s ability to complete the proposed project successfully. Higher weighting will be given to referenced projects that have been delivered using the CMAR or design / build approach

X. Evaluation Criteria

- A. Rating scale will be as listed in Table 2, with 1 being a poor rating and 7, 8, 10 or 15 being the highest rating for each proposal criteria shown
- B. The City will check references for overall performance, timetable, completeness, budget, and job knowledge of selected projects/references. A satisfactory/unsatisfactory rating shall be given to each reference contacted

TABLE 2: EVALUATION CRITERIA

Proposal Criteria	Possible Points (Minimum – Maximum)	Qualification Standard
Scope of Proposal	1-15	Does the proposal show an understanding of the project scope, methodology, creative valued engineered suggestions to be used in the design and construction phases and the results that are desired from the project?

Assigned Project Team	1-8	Does the proposed team have the necessary skills and experience to fulfill the requirements of the project? Is the key staff available to do the work?
Safety Record	1-7	OSHA Illness/Injury Rate, OSHA Lost Work Day Incidence Rate and Workman's Comp Experience Modification Rate Insurance multiplier.
Firm Experience and Qualifications	1-15	Is the firm qualified to perform the work? Has the firm worked on streetscape and/or landscaping projects similar in scope to this project? Has partnering been used as a basis in design and construction of other projects? Was this work of a high quality in nature?
Preconstruction Phase Cost	1-8	Are the proposed preconstruction cost rates reasonable and competitive?
Construction Cost	1-13	Do the proposed construction cost factors compare favorably with industry standards and other CMAR firms' construction cost factors?
Firm Capability	1-8	Does the firm have experience, equipment, manpower and finances to complete the work?
Construction Performance	1-8	Do the referenced projects reflect favorably in respect to completion within the contract schedule, cost and number of change orders or claims?
Value Engineering & Innovative Ideas	1-10	What innovative solutions do you have to reduce costs, remain on schedule, minimize risk and maintain operations during construction?
Schedule	1-8	How quickly can the firm dedicate resources to complete the work? Is the proposed construction duration reasonable for the scope of work?

All submitted proposals will be considered proprietary information and will not be shared outside of the selection team.

EXHIBIT A – LOUISVILLE DOWNTOWN VISION PLAN (CONCEPT PLANS)

EXHIBIT B – ENGINEER’S SCOPE OF WORK

EXHIBIT C – OVERALL PROJECT SCHEDULE

EXHIBIT D – PROPOSAL FORM

EXHIBIT D

LOUISVILLE DOWNTOWN STREETSCAPE IMPROVEMENTS
PROPOSAL FORM

1. Preconstruction Phase Services Cost: Proposed cost for preconstruction phase services in accordance with the Request for Proposal:

_____ Dollars (\$ _____)

CONSTRUCTION PHASE COST FACTORS

2. Overhead markup: Proposed overall project overhead percentage associated with the Downtown Streetscape Improvements:

_____ Percentage (%) _____)

3. Profit markup: Proposed overall project profit percentage associated with the Downtown Streetscape Improvements:

_____ Percentage (%) _____)

1. Subcontractor markup: Proposed subcontractor markup percentage associated with the Downtown Streetscape Improvements:

_____ Percentage (%) _____)

2. Materials markup: Proposed materials markup percentage associated with the Downtown Streetscape Improvements:

_____ Percentage (%) _____)

3. Bonds and Insurance markup: Proposed markup percentage associated with bonds and insurance for the Downtown Streetscape Improvements:

_____ Percentage (%) _____)

EXHIBIT E – LIST OF PROPOSED MAJOR SUBCONTRACTORS & SUPPLIERS FORM

EXHIBIT E

LIST OF MAJOR SUBCONTRACTORS AND SUPPLIERS

1. Landscaping Subcontractor:	
2. Concrete Subcontractor:	
3. Utility Subcontractor:	
4. Electrical Subcontractor:	
5. Asphalt Subcontractor:	
6. Irrigation Subcontractor:	
7. Other:	
8. Other:	
9. Other:	

Note: City and Engineer shall approve of suppliers and subcontractors before execution of the final Guaranteed Maximum Price and Notice to Proceed for Construction

EXHIBIT F – PRECONSTRUCTION PHASE SERVICES AGREEMENT

CONSTRUCTION MANAGER AT RISK
PRE-CONSTRUCTION PHASE SERVICES

PROJECT NAME: _____

PROJECT NO. _____

This Construction Manager at Risk agreement (“Agreement”) is made and entered into this ____ day of ____, 2025, by and between the City of Louisville, a Colorado home rule municipal corporation (“City”) and _____, a _____ (“Construction Manager at Risk” or “CMAR”). The City and CMAR are collectively referred to in this contract as the “Parties” and each individually as a “Party.”

RECITALS

- A. The City desires to improve the streetscaping and landscaping in downtown Louisville and intends to construct the _____ (“Project”), as described in Exhibit A attached hereto.
- B. The City has entered into a contract with RVI, Inc. (“Design Professional”) to provide professional engineering design for the Project.
- C. The City desires to enter into this contract for CMAR to provide services to assist City and Design Professional in developing an optimum design for the Project during the pre-construction phase and to ensure the successful construction of the project during the construction phase.

AGREEMENT

NOW THEREFORE, and in consideration of the mutual promises, terms, and conditions stated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

ARTICLE 1 – TERMS AND DEFINITIONS

Addenda means written or graphic instruments issued prior to the submittal of the Guaranteed Maximum Price (GMP) proposal(s), which clarify, correct or change the GMP proposal(s) requirements.

Agreement or Contract means this written document signed by the City and CMAR, including other documents itemized and referenced in or attached to and made part of this document.

Alternate Systems Evaluations means alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional project that meets City requirements.

Contract means this Construction Manager at Risk Pre-Construction Phase Services Contract, including the standard terms and conditions, special terms and conditions, specifications/scope of work, fee schedule/price sheet, the solicitation documents, instructions to offerors (including documents referenced and included therein) and any attachments, exhibits and addendum referenced herein, the offer and any best and final offer as accepted by the City, and any amendments.

Contractor means the individual, partnership, entity, firm, company or corporation who, as a result of the competitive process, is awarded a contract by the City of Louisville.

Change Order means a document signed by the CMAR and the City that authorizes an addition, deletion or revision in the scope of services or deliverables, or an adjustment in the contract amount or the period of services, or use of owner contingency, and is issued on or after the effective date of this contract.

City or Owner means the City of Louisville, a Colorado home rule municipal corporation, with whom CMAR has entered into this contract and for whom the services are to be provided pursuant to this contract.

City's Project Manager means the person representing the City for all correspondence relating to the project.

CMAR ("Construction Manager at Risk" or "Contractor") means the person, firm, corporation or other approved legal entity with whom the City has entered into this Agreement.

Contingency, Contractor's means an agreed upon amount, either lump sum or a percentage of the cost of the work, that is included in the GMP and to be used by the CMAR in accordance with the general provisions in the construction contract. Generally, contractor's contingency recognizes that the drawings and specifications may still be less than 100% complete after the City's final acceptance of GMP.

Contingency, Owner's means the owner may, at its discretion, order changes in the scope of the project. The owner's contingency is an amount to cover changes initiated by the owner, which may be incorporated into the GMP as an allowance at the owner's discretion.

Construction Documents means collectively, the plans, specifications, details, drawings, change orders and other documents prepared by the design professionals that describe the scope of quality of the project and the materials, supplies, equipment, systems and any and all other elements required for construction of the work that are acceptable to the owner.

Construction Fee means the CMAR's administrative costs, home office overhead, and profit, whether at the CMAR's principal or branch offices. This includes the administrative costs and home office costs and any limitations or exclusions that may be included in the general conditions for the construction phase.

Contract Documents means this contract, CMAR's formal response to the RFQ or RFP (as applicable), general and special conditions of the contract, supplementary general conditions, the drawing and specifications, including all bulletins, change orders, addenda or other modifications of the drawings and specifications incorporated into the documents; the performance bond, the payment bond, insurances certifications, exhibits, attachments, and the Notice to Proceed for preconstruction phase services, and any other documents designated in this contract.

Contract Time(s) means the number of days or the dates related to the construction phase that as stated in construction documents applies to achievement of substantial completion and/or completion of the construction work so that it is ready for final payment.

Day(s) means calendar day(s) unless otherwise specifically provided in the contract documents.

Deliverables means the work products prepared by the CMAR in performing the scope of work described in this contract. Some of the major deliverables to be prepared and provided by the CMAR during the pre-construction phase may include but are limited to: Construction Management Plan, project schedule, schedule of values, alternative system evaluations, constructability reviews, procurement strategies and plans, cost estimates, construction market surveys, cash flow

projections, GMP proposals, subcontractor procurement plan, subcontractor agreements, subcontractor bid packages, supplier agreements, and others as indicated in this contract or required by the project team.

Design Professional means the qualified, licensed person, firm or corporation who furnishes design services required under the contract documents as identified by the City.

Drawings means the graphic and pictorial portions of the contract documents showing the design, location, and dimensions of the work, generally including plans, elevations, sections, details, schedules, and diagrams, excluding shop drawings.

General Condition Costs means and includes, but is not limited to, the following types of costs for the CMAR during the construction phase: payroll costs for project manager or construction manager (but not both) for work conducted at the site; payroll costs for the superintendent and full-time general foremen; payroll costs for management personnel resident and working on the site; workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities, and internet, data, and telephone services at the site; costs of liability insurance premiums not included in labor burdens for direct labor costs; costs of bond premiums; costs of consultants not in direct employ of the CMAR or subcontractors; taxes on the work and for which the CMAR is liable; and permit and license fees. Certain limitations and exclusions are described in the general conditions for the construction phase.

GMP Plans and Specification means the sets of plans and specifications provided pursuant to paragraph 2.7.3 upon which the Guaranteed Maximum Price proposal is based.

Guaranteed Maximum Price (GMP) Proposal means the CMAR's offer or proposal submitted on the prescribed form setting forth the GMP prices for the entire work or portions of the work to be performed during the construction phase. The GMP proposal(s) are to be developed pursuant to Article 2 of this agreement.

Litigation Expense means any court filing fee and costs, arbitration fees or costs, witness fee, arbitration fees, and each other fee and cost of investigating and defending or asserting any claim for indemnification under this Contract, including, without limitation, in each case, attorneys' fees, professional fees, disbursements and each other fee and cost of investigating and defending, appealing or asserting any claim for indemnification under this Contract.

Loss means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge, other than a litigation expense.

Notice to Proceed means a written notice given by the City to the CMAR fixing the date on which the CMAR shall start to perform the CMAR's obligations under this agreement.

Progress Payment Application means the form that is accepted by the City and used by the CMAR in requesting progress payments or final payment on which shall include such supporting documentation as is required by the contract documents and or the City.

Project means the scope of work as described in the recital above and "Exhibit A" project description attached hereto.

Project Team means pre-construction phase services team consisting of the design professional, CMAR, and City's project manager, City's client department's representatives, and other stakeholders who are responsible for making decisions regarding the project.

Samples means physical examples of materials, equipment, or workmanship representative of a part of the construction phase work and which establish the standards by which that portion of the construction phase work shall be evaluated.

Services, Work or Project means the subject matter of this Contract as set forth in the Scope of Work.

Shop drawings means all drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the CMAR and submitted by the CMAR to illustrate some portion of the work.

Specifications means the part(s) of the contract documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the work and certain administrative details applicable thereto.

Subcontractor means an individual, firm or corporation having a direct contract with the CMAR or any other individual, firm or corporation having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the pre-construction phase services or construction phase work at the site for which the CMAR is responsible. Subcontractors shall be selected through the Subcontractor bid process described in paragraph 2.8 of this agreement.

Subconsultant means a person, firm or corporation having a contract with CMAR to furnish services required as its independent professional associated or consultant with respect to the project.

Substantial Completion means the construction work, or an agreed upon portion of the construction work, that City has agreed to accept separately, and is sufficiently complete so that City can occupy and use the project or a portion thereof for its intended purposes.

Supplier means a manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CMAR or with any subcontractor to furnish materials or equipment to be incorporated in the construction phase work by CMAR or any subcontractor.

Total Float means the number of days by which the pre-construction phase services or construction phase work or any part of the same may be delayed without necessarily extending a pertinent schedule milestone in the project schedule.

Work means the entire completed construction, or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the contract documents for the construction phase.

Work Product means but is not limited to plans, specifications, cost estimates, tracings, studies, design analyses, original Mylar drawings, computer aided drafting and design (CADD) file, computer disks and/or other electronic records and media, and all “architectural work” and “works made for hire” as defined herein and by the United States Copyright Act, 17 U.S.C. § 101, *et seq.*

ARTICLE 2 – BASIC PRE-CONSTRUCTION PHASE SERVICES

2.1 GENERAL

- 2.1.1 The CMAR, to further the interests of the City, shall perform the services required by, and in accordance with this contract, to the satisfaction of the City’s project manager, exercising the degree of care, skill and judgment a professional construction manager performing similar services in the Denver, Colorado

Metropolitan Area would exercise at such time and under similar conditions. The CMAR shall, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practices. The services provided under this agreement shall not alter any real property owned by the City.

- 2.1.2 Program Evaluation: As a participating member of the project team, the CMAR shall provide to the City and Design Professional at design submittal milestones (i.e. 30%, 60%, 90%, 100% design completion) a written evaluation of the City's project program and project budget, each in terms of the other, with recommendations as to the appropriateness of each.
- 2.1.3 Project Meetings: The CMAR shall attend project team meetings which may include, but are not limited to, weekly, biweekly, or monthly project management meetings, project workshops, special project meetings, value engineering meetings, contract documents rolling reviews and partnering sessions.
- 2.1.4 The CMAR shall provide pre-construction phase services, described herein, in a proactive manner and consistent with the intent of the most current drawings and specifications. The CMAR shall promptly notify the City in writing whenever the CMAR determines that any drawings or specifications are inappropriate for the project and/or cause changes in the scope of work requiring an adjustment in the cost estimate, project schedule, GMP proposal and/or in the contract time for the work, to the extent such are established.
- 2.1.5 The CMAR, when requested by the City, shall attend, make presentations, and participate as may be appropriate in public agency and or community meetings germane to the project, and shall provide drawings, schedule diagrams, budget charts and other materials describing the project when their use is required or appropriate in any such public agency meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 The CMAR shall prepare a Construction Management Plan ("CMP"), which shall detail but not necessarily be limited to the CMAR's determinations concerning: (a) project milestone dates and the project schedule, including the broad sequencing of the design and construction of the project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast tracking and/or phasing the construction, (d) the number of separate sub-agreements to be awarded to subcontractors and suppliers for the project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each project team member's responsibilities and roles.
- 2.2.2 The CMAR shall add detail to its previous version of the CMP to keep it current throughout the pre-construction phase, so that the CMP is ready for implementation at the start of the construction phase. Updates of the CMP may take into account (a) revisions in drawings and specifications; (b) the CMAR's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, design professional or the CMAR, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) a requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the City.

2.3 PROJECT SCHEDULE

- 2.3.1 The fundamental purpose of the “project schedule” is to identify, coordinate and record the tasks and activities to be performed by all the project team members and then for the project team to utilize the deliverable as a basis for managing and monitoring all member’s compliance with the schedule requirements of the project. Each project team member is responsible for its compliance with the project schedule requirements. The CMAR shall, however, develop and maintain the “project schedule” on behalf of and to be used by the project team based on input from the other project team members. The project schedule shall be consistent with the most updated CMP. The project schedule shall use the Critical Path Method (CPM) technique, unless the City requests otherwise in writing. The CMAR shall use scheduling software to develop a project schedule that is acceptable to the City. The project schedule shall be presented in graphical and tabular reports as agreed upon by the project team. If project phasing as described below is required, the project schedule shall indicated milestone dates for the phases. The project schedule’s activities shall directly correlate with the Schedule of Values specified herein.
- 2.3.2 The CMAR shall include and integrate in the project schedule the services and activities required of the City, design professional and CMAR including all construction phase activities. The project schedule shall detail activities to the extent required to show (a) the coordination between conceptual design and various pre-construction phase documents, (b) separate long-lead procurements, if any, (c) permitting issues, (d) land and right-of-way acquisition, if any, (e) bid packaging strategy and awards to subcontractors and suppliers, (f) major stages of construction, (g) start-up and commissioning, and (h) occupancy of the completed work by the City. The project schedule shall include by example and not limitation, proposed activity sequences and durations for design, preparation and procession of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases noting time sensitive activities (i.e. turf grow in, canal dry ups, etc.), total float for all activities, relationships between activities, City’s occupancy requirements showing portions of the project having occupancy priority, and proposed dates for substantial completion and when the work shall be ready for final acceptance.
- 2.3.3 The CMAR shall update and maintain the project schedule throughout the pre-construction phase to ensure that it shall not require major changes at the start of the construction phase to incorporate the CMAR’s plan for the performance of the construction phase work. The CMAR shall provide updates and/or revisions to the project schedule for use by the project team, whenever required, but not less often than at the weekly, biweekly or monthly project team meetings as determined in the scope and pre-construction phase contract. The CMAR’s updates/revisions shall include a narrative describing its analysis of the progress achieved to-date (as compared to the planned progress), any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.3.4 The CMAR’s services described in this Agreement must be performed by CMAR in strict accordance with the project schedule. Failure on the part of CMAR to adhere to the project schedule requirements for activities for which it is responsible and in control will be deemed a material breach and sufficient ground for termination for cause of this Agreement by City.
- 2.3.5 Project Phasing: If phased construction is deemed appropriate and the City and design professional approve, the CMAR shall review the design and make recommendations regarding the phased issuance of construction documents to facilitate phased construction of the work, with the objective of reducing the project schedule and/or cost of the work. The CMAR shall take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability

constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1 The CMAR shall periodically evaluate the availability of labor, materials/equipment, and building systems; cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP proposals and/or the project schedule.
- 2.4.2 The CMAR shall identify, in conjunction with the project team, those additional surface and subsurface investigations that are required to provide the necessary information for the CMAR to construct the project. After completion of pre-construction phase services, the CMAR may provide additional investigation to improve the adequacy and completeness of the site condition information and data made available with the construction documents. The CMAR may be responsible for the time and cost required to obtain such additional investigations, except if otherwise provided by specific additional services.
- 2.4.3 The CMAR shall meet with the project team as required to review designs during their development. The CMAR shall be familiar with the evolving documents through the various design phases. The CMAR shall proactively advise the project team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and labor and material availability. The CMAR shall advise the project team of proposed site improvements, excavation and foundation considerations, as well as any concerns regarding coordination of the drawings and specifications. The CMAR shall proactively recommend cost effective alternatives throughout the project.
- 2.4.4 The CMAR shall routinely conduct constructability and biddability reviews of the drawings and specifications as necessary to satisfy the needs of the project team. The reviews shall attempt to identify all discrepancies and inconsistencies in the construction documents, especially those related to clarity, consistency, and coordination of work of subcontractors and suppliers.
- 2.4.5 Constructability Reviews: The CMAR shall evaluate whether (a) the drawings and specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the drawings and specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of work required by or inferable from the drawings and specifications are practicable, and (g) the design addresses efficiency issues such as access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar issues.
- 2.4.6 Biddability Reviews: The CMAR shall check cross-references with complementary drawings and sections within the specifications, and in general evaluate whether (a) the drawings and specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well in similar installations, (c) the design provides as-built data, (d) specifications include alternatives in the event a requirement cannot be met in the field, and (e) the project is likely to be subject to differing site conditions considering the data on subsurface conditions, physical conditions of existing surface and subsurface facilities, and physical conditions of underground utilities made available by the design or resulting from conditions inherent to work similar to the work.

- 2.4.7 The CMAR shall provide the results of the constructability and biddability reviews to the project team in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the drawings and specifications with notations and recommendations made on the drawings, specifications and other documents. If requested by the City, the CMAR shall meet with the project team to discuss and review reports.
- 2.4.8 The CMAR's constructability and biddability reviews shall be from a contractor's perspective, and though it will serve to reduce the numbers of Requests for Information (RFIs) and changes during the construction phase, responsibility for the drawings and specifications shall remain with the design professional and not the CMAR.
- 2.4.9 Notification of Variance or Deficiency: It shall be the CMAR's responsibility to assist the design professional in ensuring that the construction documents are in accordance with all applicable laws, statutes, ordinances, building codes, rules and regulations. If the CMAR recognizes that portions of the construction documents are at variance or deficient with reference to any applicable laws, statutes, ordinances, building codes, rules and regulations it shall promptly notify the project team in writing, describing the apparent variance or deficiency.
- 2.4.10 Alternate Systems Evaluations: Using value engineering principles, the project team shall routinely identify and evaluate alternate systems, approaches, and design changes that have the potential to reduce project costs while still delivering a quality and functional product. If the project team agrees, the CMAR, in cooperation with the design professional, shall perform a cost/benefit analysis of the alternative and submit it in writing to the project team. The project team will decide which alternatives will be incorporated into the project. The design professional shall have full responsibility for the incorporation of the alternatives into the drawings and specifications. The CMAR shall include the cost of the alternatives into the cost estimate and any GMP proposals.

2.5 COST ESTIMATES

- 2.5.1 Within thirty (30) days after receipt of the documents for the various design phases, the CMAR shall provide a detailed cost estimate review and a written review of the documents. The design professional and CMAR shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached the City shall make the final determination.
- 2.5.2 If any estimate submitted to the City exceeds previously accepted estimates or the City's project budget, the CMAR shall make appropriate recommendations on cost cutting ideas, methods or alternative materials to the project team that the CMAR believes will bring the project back into the project budget.
- 2.5.3 In addition to milestone estimates, the CMAR shall periodically provide a tracking report that identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the CMAR's responsibility to keep the project team informed as to the major trend changes in costs relative to the City's budget.
- 2.5.4 The CMAR shall provide the City with a preliminary "cash flow" projection based upon historical resources of similar projects to assist the City in the financing process at the time of the submittal of the GMP and at any other time requested by the City.

2.6 GUARANTEED MAXIMUM PRICE (“GMP”) PROPOSALS

- 2.6.1 The proposed GMP for the entire work (or portions thereof) shall be presented in a format acceptable to the City. The City may request a GMP proposal for all or any portion of the project at any time during the pre-construction phase. Any GMP proposal submitted by the CMAR shall be based on and consistent with the current updated cost estimate at the time of the request and the associated estimates for construction costs, and include any clarifications or assumptions upon which the GMP proposal(s) are based.
- 2.6.2 GMP Proposals for the entire project shall be the sum of the maximum cost of the work, and include the CMAR's construction fee, general conditions fee, and contractor's contingency. The CMAR guarantees to complete the project at or less than the final approved GMP proposal amount (i.e. the contract amount for the construction phase contract) and agrees that it shall be solely responsible for any difference between the actual cost of work and that amount.
- 2.6.3 The CMAR, in preparing any GMP proposal, shall obtain from the design professional, three sets of signed, sealed, and dated plans and specifications (including all addenda). The CMAR shall prepare the GMP proposal in accordance with the City's request for GMP proposal requirements based on the most current completed plans and specifications at that time. The CMAR shall mark the face of each document of each set upon which its proposed GMP is based. The CMAR shall send one set of those documents to the City's project manager, keep one set, and return the third set to the design professional.
- 2.6.4 An updated project schedule shall be included with any GMP proposal that reflects the scope of work shown in the current set of design documents upon which the GMP proposal(s) is based. Any such project schedule updates shall continue to comply with the requirements of section 2.3.
- 2.6.5 In the event the CMAR desires to maintain a contractor's contingency allowance within the GMP, the criteria for development of that allowance, and the permitted uses of the allowance, must be approved by the City in writing. The terms and conditions regarding use of the allowance during the construction phase shall be established by the City and reflected in the contract for that phase of the project.
- 2.6.6 If the construction contract is negotiated as a not-to-exceed amount, all GMP savings (including, without limitation, any unused contingency allowance) resulting from a lower actual project cost than anticipated by the CMAR shall revert to the City.

2.7 GMP PROPOSAL(S) REVIEW AND APPROVAL

- 2.7.1 The CMAR shall meet with the project team to review each GMP proposal and the written statement of its basis. In the event the project team discovers inconsistencies or inaccuracies in the information presented, the CMAR shall make adjustments as necessary to the GMP proposal, its basis, or both.
- 2.7.2 The City, upon receipt of any GMP proposal from the CMAR, may submit the same documents that were used by the CMAR in developing its GMP to an independent third party or to the design professional for review and verification. The third party (or design professional) will develop an independent estimate of the cost of work and review the project schedule for the associated scope of the GMP proposal.
- 2.7.3 If the CMAR's GMP proposal is greater or far less than the independent third party estimate, as determined by the City, the City may require the CMAR to reconfirm its GMP proposal. Following receipt of a written request from the City, the CMAR shall (i) accept the independent third party's (or design professional's)

estimate for the cost of work as part of its GMP or (ii) present a report, at an in-person meeting with the City and design professional, within seven (7) days, identifying, explaining and substantiating the differences. The CMAR may be requested to, or may at its own discretion, submit a revised GMP proposal for the City's consideration. At that time the City may do one of the following:

- (a) Accept the CMAR's original or revised GMP proposal, if within the City's budget, without comment;
- (b) Accept the CMAR's original or revised GMP proposal that exceeds the City's budget, and indicate in writing to the CMAR that the project budget has been increased to fund the difference; or
- (c) Reject the CMAR's original or revised GMP proposal because it exceeds the City's budget or the independent third party's estimate; in which event, the City may terminate this contract and/or elect to not enter into a separate contract with the CMAR for the construction phase associated with the scope of work reflected in the GMP proposal.

2.7.4 If during the review and negotiation of GMP proposals design changes are required, the City shall authorize and cause the design professional to revise the construction documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP proposal. Such revised construction documents shall be furnished to the CMAR. The CMAR shall promptly notify the project team if any such revised construction documents are inconsistent and with the agreed-upon assumptions and clarifications.

2.8 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

2.8.1 Prior to submission of a GMP, the CMAR may select subcontractors and major suppliers based on qualifications only or by competitive bid.

- (a) Selection by qualifications only: The City may approve the selection of a subcontractor or major supplier based only on their qualifications when the City agrees that it is in the project's best interest and approves the selected subcontractor or major supplier. Qualification-based selection of subcontractors and major suppliers may only occur prior to the submittal of the GMP proposal.
- (b) The CMAR shall prepare a subcontractor / major supplier selection plan and submit the plan to the City for approval. The CMAR shall apply the plan in the evaluation of the qualification of a subcontractor or major supplier and provide the City with its review and recommendation.
- (c) The CMAR shall negotiate costs for services/supplies from each subcontractor and major supplier selected under this method.
- (d) The CMAR shall identify all portions of the work the CMAR desires to self-perform.
- (e) All documents prepared by CMAR for purposes of requesting or soliciting qualifications or competitive bids are public records and must be made available for public inspection pursuant to the Colorado Open Records Act, § 24-72-200.1, *et seq.*, C.R.S.

2.8.2 Selection by competitive bid and qualifications: All work shall be competitively bid unless a subcontractor or major supplier was selected by qualifications only. Competitive bids may occur prior to or after the GMP proposal(s).

(a) The CMAR shall develop subcontractor or major supplier interest; submit the names of a minimum of three qualified subcontractors or major suppliers for each trade in the project to the City for approval; and solicit bids from various work categories. If there are not three qualified subcontractors or major suppliers available for a specific trade or there are extenuating circumstances warranting such, the CMAR may request the City's approval to submit less than three names. The foregoing shall not apply to work categories the CMAR has indicated the CMAR desires to self-perform. No change in the City-approved subcontractors and major suppliers shall be allowed without the City's prior written approval.

(b) If the City objects to any nominated subcontractor or major supplier, or to any self-performed work for good reason, the CMAR shall nominate a substitute subcontractor or major supplier.

2.8.3 The CMAR shall distribute drawings and specifications, and when appropriate, conduct a prebid conference with prospective subcontractors and major suppliers.

2.8.4 *[Intentionally Omitted.]*

2.8.5 The CMAR shall receive, open, record and evaluate the bids. The apparent low bidders shall be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CMAR, in addition to bid price, may consider the following factors: past performance on similar projects; qualifications and experience of personnel assigned; quality management plan; approach or understanding of the work to be performed; and performance schedule to complete the work. The final evaluation of subcontractor and major supplier bids shall be done with a City representative in attendance to observe and witness the process. The CMAR shall resolve any subcontractor or major supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the cost of the work. All bids are public records and must be made available for public inspection pursuant to the Colorado Open Records Act, § 24-72-200.1, *et seq.*, C.R.S.

2.8.6 Within fifteen (15) days after subcontractor or major supplier bid opening, the CMAR shall prepare a list of recommended subcontractors or major suppliers for each category of work for the City's review and approval. For each sub-agreement, the list shall detail (a) the amount of the subcontractor bid or major supplier and the corresponding subcontractor or major supplier; (b) the sum of subcontractor or major supplier bids received for all intended sub-agreements; and (c) the type and cost of trade work that the CMAR intends to self-perform, if any.

2.8.7 Upon prior City approval of all subcontractors and/or major suppliers, the CMAR shall submit a summary report to the City of the selection process. The report shall indicate the subcontractors and/or major suppliers contacted to determine interest, the subcontractors and/or major suppliers solicited, the bids received and costs negotiated, and the recommended subcontractors and/or major suppliers for each category of work.

2.8.8 The approved subcontractors and major suppliers shall provide a schedule of values with their bid proposals, which shall be used to create the overall project schedule of values.

2.8.9 If after receipt of sub-bids or after award of subcontractors and/or major suppliers, the City objects to any nominated subcontractor or to any self-performed work for good reason, the CMAR shall nominate a substitute subcontractor or major supplier from the list of subcontractors and/or major suppliers who submitted bids for the work affected, if such option is still available. Once the City approves the substitute subcontractors and major suppliers, the CMAR's proposed GMP for the work or portion thereof shall be correspondingly adjusted to reflect any higher or lower costs from such substitution.

2.8.10 After receipt of the Notice of Intent to Award, the City shall promptly conduct a pre-award conference with the CMAR and other project team members. At the pre-award conference the CMAR shall (a) review the nominated slate of subcontractors and/or major suppliers and discuss any City concerns with or objections to the nominated subcontractors and/or major suppliers; (b) discuss City concerns relating to any proposed self-performed work; (c) review the CMAR's proposed contract price for the work during the construction phase; (d) discuss the conditions, if any, under which the City shall agree to leave any portion of the remaining contractor's contingency within the contract price for the construction phase work; (e) resolve possible time frames for the date of commencement of the contract time for the construction phase of the work; (f) schedule the pre-construction conference; and (g) discuss any other matters of importance.

2.9 CONSTRUCTION PHASE

2.9.1 If City accepts CMAR's original or revised GMP Proposal, CMAR and City will enter a Construction Services Agreement for Construction of the Project based upon CMAR's Pre-Construction Services performed and GMP proposal accepted by the City pursuant to this Agreement, in substantially the form of the construction contract template attached to the RFQ/P pursuant to which CMAR submitted its proposal to perform the services contemplated under this Agreement. All of CMAR's obligations, duties and warranties in relation to Pre-Construction Services and deliverables (including specifically the GMP proposal) survive the completion of this Agreement and will be incorporated into the Construction Services Agreement.

ARTICLE 3 – PERIOD OF SERVICES

3.1 PERIOD OF SERVICES

3.1.1 The design phase services described in this contract shall be performed by the CMAR in accordance with the most current updated project schedule. The CMAR's failure to adhere to the project schedule requirements for activities for which it is responsible shall be sufficient grounds for termination of the contract by the City.

3.1.2 If the date of performance of any obligation or the last day of any time period provided for herein falls on a Saturday, Sunday, or a City recognized holiday, then the performance obligation shall be due and owing on the first day thereafter which is not a Saturday, Sunday or City-recognized City holiday. Except as otherwise provided herein, any required performance shall be timely made if completed no later than 5:00 p.m. (Colorado time) on the day of performance.

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

- 4.1.1 Based on the pre-construction phase services fee proposal submitted by the CMAR and accepted by the City (which by reference is made a part of this contract) the City shall pay the CMAR a fee not to exceed negotiated amount dollars as follows:

For the basic services described in Article 2, the CMAR shall receive a fee not to exceed: \$ _____

Additional Services and allowances, as described in subsection 4.3: \$ _____

Pre-construction phase related expenses, as described in subsection 4.3.1.4: \$ _____

Total contract amount: \$ _____

4.2 PAYMENTS

- 4.2.1 Requests for monthly payments by the CMAR for pre-construction phase services shall be submitted to the City on an “Application and Certificate for Payment” form and shall be accompanied by a progress report, and detailed invoices and receipts, if applicable. Any requests for payment shall include, as a minimum, a narrative description of tasks accomplished during the billing period, a listing of any deliverables submitted, and copies of any subconsultants’ requests for payment, plus similar narrative and listings of deliverables associated with their work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee shall be paid in accordance with the work effort expended on that service in the preceding month.
- 4.2.2 The fees for the CMAR and any subconsultants shall be based upon the hourly rate schedule included as Exhibit B attached.
- 4.2.3 The CMAR shall pay all sums due subconsultants for services and reimbursable expenses within fourteen (14) days after the CMAR has received payment for those services from the City.
- 4.2.4 The CMAR agrees that it will not submit charges or claims for costs or damages of any type for any delays or hindrances beyond the reasonable control of the City during the progress of any portion of the services specified in this agreement. Such delays or hindrances, if any, shall be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. The City does not waive any of its legal rights by agreeing to extend the time for the CMAR to complete any services in whole or in part.
- 4.2.5 If any service(s) executed by the CMAR is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CMAR, the CMAR is to be paid for the services performed prior to the abandonment or suspension.

4.3 ADDITIONAL PRE-CONSTRUCTION PHASE SERVICES

4.3.1 The following additional services shall be required for the successful completion of the project. Markups are not authorized and only the reimbursable items specifically identified below shall be reimbursable:

4.3.1.1 If not available within the CMAR's staff, CMAR shall secure services of a qualified individual or firm to provide design plan and specifications review as required. The CMAR shall forward invoices from the individual or firm to the City for payment of costs. The cost of such services shall not exceed \$ _____ without prior written approval of the project manager.

4.3.1.2 All cost estimating services required under this Agreement shall be provided "in house" by the CMAR.

4.3.1.3 If approved by the City, the CMAR shall provide services related to evaluations of and recommendations for long lead-time procurements to meet the project schedule requirements. The cost for such services shall not exceed \$ _____ without prior written approval of the project manager.

4.3.1.4 When previously authorized by the project manager in writing, the CMAR shall be entitled to reimbursement at cost of pre-construction phase services related expenses incurred for the following items:

- (a) Reasonable charges for air transportation, ground travel, authorized expenses while traveling shall be reimbursable in accordance with the GSA Travel Management Policies. The CMAR shall provide detailed receipts for all reimbursable charges. Travel expenses shall not exceed \$ _____ without prior written approval of the project manager.
- (b) Long-distance telephone and long-distance facsimile costs incurred on behalf of the project shall be reimbursed. These costs shall not exceed \$ _____ without prior written approval of the project manager.
- (c) Non-overhead printing expenses incurred including the printing of construction documents for bidding, courier services or other project-related services that may be requested by the City. The cost of such service shall not exceed \$ _____ without prior written approval of the project manager.

ARTICLE 5 – CITY'S RESPONSIBILITIES

5.1 CITY RESPONSIBILITIES

5.1.1 The City, at no cost to the CMAR, shall furnish the following information:

5.1.1.1 One copy of data the City determines pertinent to the work. However, the CMAR shall be responsible for searching the records and requesting information it deems reasonably necessary for the project.

5.1.1.2 All available data and information pertaining to relevant policies, standards, criteria, and studies.

- 5.1.1.3 The name of the City employee or City's representative who will serve as project manager during the term of this agreement. The project manager has the authority to administer this contract and monitor the CMAR's compliance with all terms and conditions stated herein. The project manager has the authority to approve the project budget and project schedule. All requests for information from or decisions by the City on any aspect of the work or deliverables shall be directed to the project manager.
- 5.1.1.4 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the project. The scope of services for the design professional shall be provided to the CMAR for its information. The CMAR shall have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and design professional.
- 5.1.1.5 Supply all available copies of programs, reports, drawings, and specifications reasonably required by the CMAR.
- 5.1.1.6 Give written notice to the CMAR when the City becomes aware of any default or defect in the project or non-conformance with the drawings and specifications.
- 5.1.1.7 Notify the CMAR of changes affecting the budget allocations.

ARTICLE 6 – CONTRACT CONDITIONS

6.1 PROJECT DOCUMENTS AND COPYRIGHTS

- 6.1.1 City ownership of project documents: All work product (electronically or manually generated) including but not limited to cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared in the performance of this contract (collectively referred to as project documents) shall be the property of the City and are to be delivered to the project manager before the final payment is made to the CMAR. Nonetheless, in the event these project documents are altered, modified or adapted without the consent of the CMAR, which consent the CMAR shall not unreasonably withhold, the City agrees to hold the CMAR harmless to the extent permitted by law, from any liability arising out of or resulting from the City's alteration, modification or adaptation of the project documents.
- 6.1.2 CMAR to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CMAR, its subconsultants or personnel, during the course of performing this contract or arising out of the project shall belong to the CMAR.
- 6.1.3 License to City for Reasonable Use: The CMAR hereby grants, and shall require its subconsultants to grant a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the project documents, works or deliverables developed or created for the project and this contract. This license shall also include the making of derivative works.

6.1.4 Documents to Bear Seal: When applicable and required by Colorado law, the CMAR and its subconsultants shall endorse by a Colorado professional seal all plans, works and deliverables prepared by them for this contract.

6.1.5 City Marks/Logos: All City trade names, trademarks, service marks, websites, and/or logos belong to the City and may not be used in any advertising, promotions, or otherwise, without the prior written consent of the City.

6.2 COMPLETENESS AND ACCURACY OF CMAR'S WORK

6.2.1 The CMAR shall be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other pre-construction phase deliverables prepared or compiled pursuant to its obligations under this contract and shall at its sole own expense correct its work or deliverables to the City's sole satisfaction. The fact that the City has accepted or approved the CMAR's work or deliverables shall in no way relieve the CMAR of any of its responsibilities under the contract, nor does this requirement to correct the work or deliverables constitute a waiver of any claims or damages otherwise available by law to the City.

6.3 ALTERATION IN CHARACTER OF WORK

6.3.1 In the event an alteration or modification in the character of work or a deliverable results in a substantial change to the character of the work under the contract, thereby materially increasing or decreasing the scope of services, cost of performance, or project schedule, the work or deliverable shall nonetheless be performed as directed by the City. However, before any altered or modified work begins, a change order or amendment shall be approved and executed by the City and the CMAR. Such change order or amendment shall not be effective until approved by the City in writing. In the event of additions to, modifications of, or deletions from the project, the compensation to be paid to the CMAR may accordingly be adjusted by the prior mutual agreement of the contracting Parties. No claim for extra work done or materials furnished by the CMAR shall be allowed by the City except as provided herein, nor shall the CMAR do any work or furnish any material(s) not covered by contract unless such work or material is first authorized in writing by the project manager. Work or material(s) furnished by the CMAR without prior written authorization shall be at the CMAR's sole cost and expense, and the CMAR hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished shall be made.

6.4 DATA CONFIDENTIALITY

6.4.1 As used in the contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CMAR in the performance of this contract.

6.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CMAR in connection with the CMAR's performance of this contract are confidential, proprietary information belonging to the City.

- 6.4.3 The CMAR shall not divulge data to any third party without the prior written consent of the City. The CMAR shall not use the data for any purposes except to perform the services required under this contract. These prohibitions shall not apply to the following data provided the CMAR has first given the required notice to the City:
- 6.4.3.1 Data which was known to the CMAR prior to its performance under this contract unless such data was acquired in connection with work performed for the City;
 - 6.4.3.2 Data which was acquired by the CMAR in its performance under this contract and which was disclosed to the CMAR by a third party, who to the best of the CMAR's knowledge and belief, had the legal right to make such disclosure and the CMAR is not otherwise required to hold such data in confidence; or
 - 6.4.3.3 Data which is required to be disclosed by the CMAR by virtue of law, regulation, or court order.
- 6.4.4 In the event the CMAR is required or requested to disclose data to a third party, the CMAR shall first notify the City project manager of the request or demand for data. The CMAR shall timely give the City sufficient facts to give the City a meaningful opportunity to consent to the disclosure or to take action that the City deems appropriate to protect the data from disclosure.
- 6.4.5 Within ten (10) calendar days after completion of services for a third party on real or personal property owned or leased by the City the CMAR shall deliver a copy of all related data to the City. All data shall continue to be subject to the confidentiality agreements of this contract.
- 6.4.6 The CMAR assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CMAR, its employees, agents or subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section shall be deemed to cause irreparable harm.

6.5 PROJECT STAFFING

- 6.5.1 The CMAR has submitted to the City as part of its proposal an organization chart for the CMAR's staff and subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications/Bids, that will be performing the services under this Agreement. In the event the CMAR desires to change any key personnel, the CMAR shall submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel shall include, but are not limited to, principal-in-charge, project manager, superintendent, project director and those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.
- 6.5.2 The CMAR shall maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this contract throughout the period of those services. If the City objects to any of the CMAR's staff based on reasonable cause, the CMAR shall take prompt corrective action acceptable to the City and, if required, remove such personnel from the project and replace with new personnel acceptable to the City.
- 6.5.3 The CMAR's obligations pursuant to subsections 6.5.1 and 6.5.2 shall be performed at the CMAR's sole cost. Without limiting the generality of the foregoing, should any of the CMAR's key personnel be replaced, and should such replacement require the City, design professional, or the CMAR to undertake

additional reevaluations, coordination, orientations, etc., the CMAR shall be fully responsible for all such additional costs and services.

6.6 SUBCONSULTANTS

- 6.6.1 Prior to the beginning the work, the CMAR shall provide the City with the names of all subconsultants to be used on this project for the City's approval. Subsequent changes in subconsultants shall be subject to the City's approval.
- 6.6.2 If the City objects to any of the CMAR's subconsultants based on reasonable cause, the CMAR shall take prompt corrective action acceptable to the City and, if required, remove such personnel from the project and replace with new personnel acceptable to the City, at no cost to the City. The City will have no contractual relationship and will not work directly with subconsultants.

6.7 INDEPENDENT CONTRACTOR

- 6.7.1 The CMAR is and shall be an independent contractor and whatever measure of control the City exercises over the work performed pursuant to the contract shall be as to the results of the work only. No provision in this contract shall give or be construed to give the City the right to direct the CMAR as to the details of accomplishing the work. Each Party shall act in its individual capacity and not as an agent, employee, partner, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. **CMAR shall satisfy all tax and other governmentally imposed responsibilities including but not limited to, payment of state, federal, and social security taxes, unemployment taxes, worker's compensation and self employment taxes. No state, federal or local taxes of any kind shall be withheld or paid by the City. CMAR is not entitled to worker's compensation benefits except as may be provided by the CMAR nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the CMAR or some entity other than the City.**
- 6.7.2 The CMAR does not have the authority to act for the City, or to bind the City in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the City.
- 6.7.3 The CMAR has and retains control of and supervision over the performance of the CMAR's obligations hereunder and control over any persons employed by the CMAR for performing the services hereunder.
- 6.7.4 The City will not provide training or instruction to the CMAR or any of its employees regarding the performance of the Services hereunder.
- 6.7.5 Neither the CMAR nor any of its officers or employees will receive benefits of any type from the City.
- 6.7.6 The CMAR represents that it is engaged in providing similar services to other clients and/or the general public and is not required to work exclusively for the City.
- 6.7.7 All services are to be performed solely at the risk of the CMAR and the CMAR shall take all precautions necessary for the proper and sole performance thereof.

6.7.8 The CMAR will not combine its business operations in any way with the City's business operations and each party shall maintain their operations as separate and distinct.

6.8 TERMINATION

6.8.1 The City reserves the right, at its sole discretion and without cause, to terminate or abandon any or all services provided for in this contract or terminate or abandon any portion of the project for which any services have been performed by the CMAR upon thirty (30) days written notice to the CMAR.

6.8.2 In the event the City terminates any or all of the services or any part of the services, upon receipt of written notice of the termination the CMAR shall immediately discontinue work and take all reasonable steps to minimize the incurrence of costs allocable to the work under this contract.

6.8.3 The CMAR, upon such termination, shall promptly deliver to the City all reports, estimates and other work or deliverables entirely or partially complete, together with all unused materials supplied by the City.

6.8.4 The CMAR shall appraise the work completed and submit an appraisal to the City for evaluation. The City shall have the right to inspect the CMAR's work or deliverable to appraise the work completed.

6.8.5 The CMAR shall receive compensation in full for services satisfactorily performed to the date of such termination. The fee shall be paid in accordance with Article 4 of this contract, and shall be an amount mutually agreed upon by the CMAR and the City. If there is no mutual agreement, the final determination shall be made in accordance with paragraph 6.9, "Disputes." However, in no event shall the fee exceed that set forth in Article 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work." The City shall make the final payment within sixty (60) days after the CMAR has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

6.9 DISPUTES

6.9.1 In any unresolved dispute arising out of an interpretation of this contract or the duties required therein, the final determination at the administrative level shall be made by the City's Director of Public Works.

6.10 WITHHOLDING PAYMENT

6.10.1 To the extent permitted by law, the City reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City may have against the CMAR, until such time that a final settlement on those claims has been reached between the parties.

6.11 RECORDS/AUDIT

6.11.1 Records of the CMAR's direct personnel payroll, reimbursable expenses pertaining to this project and records of accounts between the City and CMAR shall be kept on a generally recognized accounting basis. The City and its authorized representatives reserve the right to audit the CMAR's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this contract and any

change orders. The City reserves the right to decrease the contract amount and/or payments made on this contract if, an audit of the CMAR's records shows that the CMAR has provided false, misleading or inaccurate cost and pricing data.

- 6.11.2 The CMAR shall include a provision similar to paragraph 6.11.1 in all of its agreements with subconsultants, subcontractors, and suppliers providing services under this contract to ensure the City and its authorized representatives have access to the subconsultants', subcontractors', and suppliers' records to verify the accuracy of cost and pricing data. The City reserves the right to decrease the contract amount and/or payments made on this contract if the above provision is not included in subconsultant, subcontractor, and supplier contracts, or if one or more of those parties does not allow the City to audit its records to verify the accuracy and appropriateness of pricing data.

6.12 NOTICES

6.12.1 Unless otherwise provided herein, all notices and demands under this contract shall be in writing and shall be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the third day after the postmarked date if sent by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To City: _____, Project Manager
City of Louisville
749 Main Street
Louisville, CO 80027

To CMAR

To Design Professional:

6.13 COMPLIANCE WITH LAWS; CODE OF ETHICS

- 6.13.1 CMAR shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.
- 6.13.2 CMAR acknowledges that the City of Louisville Code of Ethics provides that independent contractors who perform official actions on behalf of the City which involve the use of discretionary authority shall not receive any gifts seeking to influence their official actions on behalf of the City, and that City officers and employees similarly shall not receive such gifts. CMAR agrees to abide by the gift restrictions of the City's Code of Ethics.
- 6.13.3 CMAR will not discriminate against any employee or applicant for employment because of age 40 and over, race, sex, color, religion, national origin, disability, genetic information, sexual orientation, veteran status, or any other applicable status protected by state or local law. CMAR will take affirmative action

to ensure that applicants are employed and that employees are treated during employment without regard to any status set forth in the preceding sentence. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CMAR agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

- 6.13.4 CMAR shall be in compliance with the applicable provisions of the American with Disabilities Act as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

6.14 CONFLICT OF INTEREST

- 6.14.1 To evaluate and avoid potential conflicts of interest, the CMAR shall provide written notice to the City of any work or services performed by the CMAR for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice shall be given seven (7) business days prior to commencement of the project by the CMAR for a third party, or seven (7) business days prior to an adverse action as defined below.
- 6.14.2 Actions considered to be adverse to the City under this contract include but are not limited to:
- 6.14.2.1 Using data as defined in the contract, acquired in connection with this contract to assist to third party in pursuing administrative or judicial action against the City;
 - 6.14.2.2 Testifying or providing evidence on behalf of any person in connection with administrative or judicial action against the City;
 - 6.14.2.3 Using data to produce income for the CMAR or its employees independently of performing the services under this contract, without the prior written consent of the City.
- 6.14.3 The CMAR represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CMAR under this contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.
- 6.14.4 The CMAR's failure to provide a written notice and disclosure of the information as set forth in this section shall constitute a material breach of this contract.

6.15 CONTRACTOR'S LICENSE AND PRIVILEGE LICENSE

- 6.15.1 Prior to performing any work, the CMAR must provide to the City project manager its contractor's license classification and number, its City of Louisville contractor's license number, and its Federal Tax I.D. number.

6.16 SUCCESSOR AND ASSIGNS

- 6.16.1 The City and the CMAR shall each bind itself, and its partners, successors, assigns, and legal representatives to the other party to this contract and to the partners, successors, assigns, and legal representatives of the other party in respect to all covenants of this contract. Neither the City nor the CMAR shall assign, delegate, sublet, or transfer its interest in this contract without the prior written consent of the other. Any assignment, delegation, sublet, or transfer without the prior consent of the City shall be void. In no event shall any contractual relationship be created or be construed to be created between any third party and the City.

6.17 THIRD PARTY BENEFICIARY

- 6.17.1 This contract shall not be construed to give any rights or benefits in the contract to anyone other than the City and the CMAR. All duties and responsibilities set forth in this contract shall be for the sole and exclusive benefit of the City and the CMAR and not for the benefit of any other party.

6.18 FORCE MAJEURE

- 6.18.1 Neither Party shall be in default by reason of any failure in performance of this contract if such failure arises out of causes beyond their reasonable control and without the fault or negligence of the Party including, but not limited to unforeseeable acts of God, terrorism, or other acts of public enemy, war, and pandemics, epidemics, or quarantine restrictions.
- 6.18.2 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party of the delay in writing and as soon as practical, and shall specify the causes of such delay in the notice. The notice shall specifically refer to this provision. The delayed party shall commence work as soon as practicable and shall notify the other party in writing when it has done so. The time for completion of work shall be extended by contract modification for a period of time equal to the time that the effects of the force majeure prevented the delayed party from performing in accordance with this contract.

6.19 COVENANT AGAINST CONTINGENT FEES

- 6.19.1 The CMAR warrants that no person has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City has any interest, financially or otherwise, in the CMAR. In the event of a breach or violation of this warranty, the City shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract amount or consideration the full amount of the commission, percentage, brokerage, or contingent fee.

6.20 NON-WAIVER PROVISION

- 6.20.1 The failure of either party to enforce any of the provisions of this contract shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the contract or any part thereof or the right of either party to thereafter enforce each and every provision.

6.21 JURISDICTION

6.21.1 This contract shall be governed, construed and interpreted under the laws of the State of Colorado without regard to conflict or choice of law provisions. Any action to enforce any provision of this contract or to obtain any remedy hereunder shall be brought in the District Court, Boulder County, Colorado, and in no other court. Consultant hereby waives its right to challenge the personal jurisdiction of the District Court of Boulder County of the State of Colorado over it.

6.22 SURVIVAL

6.22.1 All warranties, representations, and indemnifications made or agreed to by the CMAR shall survive the termination of this contract.

6.23 MODIFICATION

6.23.1 No supplement, modification, or amendment of any term of this contract shall be deemed binding or effective unless there is prior written consent signed by the Parties with authority to do so.

6.24 SEVERABILITY, CONFLICT LANGUAGE

6.24.1 If any provision of this contract to any person or circumstances is determined to be invalid, illegal or unenforceable to any extent, the remainder of this contract shall not be affected and shall be enforceable to the fullest extent permitted by law.

6.24.2 All work or deliverables performed shall conform to all applicable federal, state and local laws, codes, ordinances, rules, requirements, and contract terms.

6.24.3 Contract Order of Precedence: In the event of a conflict in the provisions of the contract, as accepted by the City and as they may be amended, the following shall prevail in the order set forth below [SUBJECT TO CHANGE]:

1. Standard Terms and Conditions;
2. Statement or Scope of Work;
3. Solicitation, Instructions to Offerors (including other documents referenced or included);
4. Offer;
5. Fee Schedule/Price Sheet; and
6. Attachments, Addendums and Exhibits

6.25 TIME IS OF THE ESSENCE

6.25.1 Time of each of the terms, covenants, and conditions of this contract is hereby expressly made of the essence. The City is providing services that involve the health, safety, and welfare of its citizens and the general public, and delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the CMAR.

6.26 COOPERATION AND FURTHER DOCUMENTATION

6.26.1 The CMAR agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this contract.

ARTICLE 7 – INSURANCE

7.1 INSURANCE REQUIREMENTS

- 7.1.1 The CMAR shall procure insurance coverage as described in section 7.2 against claims for injury to persons or damage to property which may arise from or in connection with this contract by the CMAR and its agents, representatives, employees, subconsultants, subcontractors, and suppliers. The obligation to procure and maintain insurance continues until all of the CMAR and its subconsultants, subcontractors, and supplier's obligations under the contract have been discharged, including any warranty periods. The CMAR shall cause all subcontracts to contain identical terms and conditions to those included in this Article.
- 7.1.2 The insurance requirements are minimum requirements for this contract. The City in no way warrants that the minimum requirements set forth herein are sufficient to protect the CMAR from liabilities that might arise out of the performance of the work under the contract by the CMAR, and its agents, representatives, employees, subconsultants, subcontractors, and employees. The CMAR is free to purchase such additional insurance as it may determine necessary. The amount and type of insurance coverage requirements set forth herein shall in no way be construed as limiting the scope of the indemnification obligations under this contract.

7.2 MINIMUM SCOPE AND LIMITS OF INSURANCE

- 7.2.1 Without limiting any of its obligations or liabilities, the CMAR, at its own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed by the State of Colorado, and in a form reasonably satisfactory to the City. Evidence of qualified self-insured status may be substituted if reasonably satisfactory to the City. Insurance provided by CMAR shall be primary.

7.2.1.1 General Clauses

- 7.2.1.1.1 **Additional Insured.** Except for Workers' Compensation, Employer's Liability, and Professional Liability coverage, the City and its agents, representatives, directors, officials, employees, and officers shall be named as additional insureds on all policies for insurance coverage required by this contract.

- 7.2.1.1.2 **Coverage Term.** All insurance required herein shall be maintained in full force and effect until work required to be performed under the terms of the contract are satisfactorily completed and formally accepted; failure to do so may constitute a material breach of this contract, at the sole discretion of the City.

- 7.2.1.1.3 **Primary Coverage.** The CMAR's insurance, shall be primary insurance. Any insurance carried by the City shall be excess coverage and not contributory coverage to that provided by the CMAR.

- 7.2.1.1.4 **Claim Reporting.** Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.

- 7.2.1.1.5 **Waiver.** The policies, except Workers' Compensation, Employer's Liability, and Professional Liability, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officials, employees, and officers for any claims arising out of the work of the CMAR. The City does not waive subrogation on Workers' Compensation.
- 7.2.1.1.6 **Deductible/Retention.** The policies may provide coverage which contains deductibles or self-insured retentions. The CMAR shall be solely responsible for any deductible and/or self-insured retentions. If required by the City, the CMAR shall post a performance bond equal to the deductible or self-insured retention.
- 7.2.1.1.7 **Certificates of Insurance.** Prior to commencing services under this contract, the CMAR shall furnish the City with Certificates of Insurance and additional insured endorsements, issued by CMAR'S insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this contract are in full force and effect and that the City is endorsed as an additional insured. These documents shall identify this contract number and shall provide for not less than thirty (30) days advance Notice of Cancellation, Termination, or Material Alteration. Such certificates shall be sent directly to _____, Project Manager, City of Louisville, 749 Main Street, Louisville, Colorado 80027.

7.2.2 Workers' Compensation/Employer's Liability

7.2.2.1 The CMAR shall maintain Workers' Compensation/Employer's Liability insurance to cover obligations imposed by federal and Colorado law.

7.2.2.2 The CMAR shall require all subcontractors to provide Workers' Compensation and Employer's Liability to at least the same extent as provided by CMAR.

7.2.3 Automobile Liability. The CMAR shall maintain automobile liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000 each occurrence regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the CMAR services.

7.2.4 Commercial General Liability. The CMAR shall maintain commercial general liability insurance with an unimpaired limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The policy shall include coverage for premises-operations, products-completed operations, contractual liability, bodily injury and property damage, but shall not be limited to the liability assumed under the indemnification provisions of this contract. The Certificate of Insurance for the commercial general liability policy shall expressly cover CMAR's indemnification obligations set forth in this contract. The general liability insurance policy may not be written on a "claims made" basis.

7.2.5 Professional Liability. The CMAR shall maintain professional liability insurance covering negligent errors and omissions arising out of the services performed by the CMAR and any of its employees, with an unimpaired limit of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, or 10% of the construction budget, whichever is greater. The CMAR shall require each subcontractor to secure and maintain Professional Liability insurance sufficient for the protection of the portion of the

work to be performed by such subcontractor on the same basis as above. The compilation of the total required insurance coverage under this paragraph shall remain the responsibility of CMAR.

7.3 INDEMNIFICATION

7.3.1 Personal Injury and Property Damage Claims: The CMAR agrees to indemnify, defend, and hold harmless the City (including its officials, officers, insurers, agents, and employees) from all suits, actions, loss, damage, expense, costs or claims, of any character or any nature (including attorneys' and expert witness fees and all costs of litigation), attributable to bodily injury, sickness, disease, death, or injury to or destruction arising out of, or alleged to have arisen out of, any negligent act, omission or work done by the CMAR and/or its employees, suppliers, subcontractors, and/or subconsultants, in fulfillment of the terms of this contract. The CMAR further agrees to indemnify, defend, and hold harmless the City (including its officials, officers, insurers, agents, and employees) from any claim or amount giving rise to a recovery under workers' compensation laws, or arising out of the failure of the CMAR (and/or its employees, suppliers, subcontractors and/or subconsultants) to conform to applicable and appropriate statutes, ordinances, regulations, laws, court orders, or professional standards. The CMAR's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the negligent act or omission of the City; except that, it is the intent of the parties to this contract that the City shall be indemnified and held harmless by the CMAR even in those instances where it is alleged that the City was at fault in reviewing, accepting or approving the plans, specifications or work product provided by CMAR for the project; provided that, the City shall not be indemnified, or held harmless by CMAR if the City directed the CMAR to include in the plans, specifications or work product the element(s) which is the basis for any such suit, action or claim and the CMAR recommended, in writing, that such element(s) not be included in the plans, specifications or work product. It is agreed that, in those situations where the CMAR is obligated to indemnify and hold harmless the City, the CMAR shall be responsible for primary loss investigation, defense, and judgment costs. In all other situations, each party shall be responsible for its own primary loss investigation, defense and judgment costs. The defense, indemnity, and hold harmless provisions of this Agreement will survive expiration or termination of this Agreement.

7.4 INTEGRATION

7.4.1 This contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter addressed herein is hereby superseded.

IN WITNESS WHEREOF, the person signing this Agreement below, warrants that they have full authority to do so and that their signatures shall bind the parties for which they sign, and the parties hereto enter into this Agreement on the date first above written.

CITY OF LOUISVILLE,

a Colorado Municipal Corporation

By: _____
Chris Leh, Mayor

Attest: _____
Meredyth Muth, City Clerk

CMAR:

By: _____
Title: _____

EXHIBIT A

(PROJECT)

Pre-Construction Services

Scope of Services

EXHIBIT B

(PROJECT)

Pre-Construction Services
Not To Exceed Hourly Billing

Hourly Rate Schedule

**EXHIBIT G – CONSTRUCTION AGREEMENT,
GENERAL CONDITIONS, AND SUPPLEMENTARY
CONDITIONS**

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **The City of Louisville** ("Owner") and ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

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

- A. The Work will include all necessary labor, supervision, equipment, tools and materials for the construction of the Downtown Streetscape Project. Work includes, but is not limited to the following:
 - 1. Construction of the Phase 1 Downtown Streetscape Improvements, including streetscape, urban landscaping, traffic-calming, curbless street, pavilion structure, splash pad, drainage, lighting/electrical, irrigation, signage and monument
 - 2. Phase 1 Improvements will be further divided into two design packages, Phases 1A and 1B, to allow for early construction of key features.

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **Streetscape and Landscaping improvements to Downtown Louisville that will improve aesthetics, mobility, and function and contribute to increased social intersection, economic activity, and non-vehicular travel. Major improvements include landscaping, sidewalks, curbless streets, intersection enhancements, signage and wayfinding, traffic-calming, and enhanced public gathering spaces.**

ARTICLE 3—ENGINEER

3.01 The Owner has retained **RVi Planning + Landscape Architecture, Inc.** ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by **Engineer**

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

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

4.03 *Contract Times: Days*

- A. The Work will be substantially complete within [number] days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within [number] days after the date when the Contract Times commence to run.

4.05 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, 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):
1. *Substantial Completion*: Contractor shall pay Owner [\$\$\$] for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner [\$\$\$] for each day that expires after such time until the Work is completed and ready for final payment.
 4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the [ordinal number, such as 5th] day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

a. 95 percent of the value of the Work completed (with the balance being retainage).

1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

A. All amounts not paid when due will bear interest at the rate of **1.5** percent per annum.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of all of the following:

1. This Agreement.
2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
3. General Conditions.
4. Supplementary Conditions.
5. Specifications as listed in the table of contents of the project manual (copy of list attached).
6. Drawings (not attached but incorporated by reference) with each sheet bearing the following general title: **City of Louisville Downtown Vision Plan – Concept Plans**
9. Exhibits to this Agreement (enumerated as follows):
 - a. **Contractor's GMP Cost Estimate**
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.

B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
 7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 8. 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.
 9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
 10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 Standard General Conditions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on **[indicate date on which Contract becomes effective]** (which is the Effective Date of the Contract).

Owner:

Contractor:

City of Louisville

(typed or printed name of organization)

(typed or printed name of organization)

By:

By:

(individual's signature)

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If [**Type of Entity**] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone: _____

Email: _____

(If [Type of Entity] is a corporation, attach evidence of

authority to sign. If [Type of Entity] is a public body,

attach evidence of authority to sign and resolution or (where applicable) other documents authorizing execution of this

Agreement.)

Phone: _____

Email: _____

License No.: _____

State: _____

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
5. *Bidder*—An individual or entity that submits a Bid to Owner.
6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
10. *Claim*
 - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
- c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
- d. A demand for money or services by a third party is not a Claim.

- EJCDC® C-700, Standard General Conditions of the Construction Contract.**

including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
- a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.

32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *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.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *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.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *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 of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.

44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.

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

46. *Technical Data*

- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
- b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
- c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - 1. does not conform to the Contract Documents;
 - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, means 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, means 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, means to furnish and install said services, materials, or equipment complete and ready for intended use.

- 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

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

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

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.

- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to longterm compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will 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.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

A. Standards Specifications, Codes, Laws and Regulations

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

2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

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

B. *Resolving Discrepancies*

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

3.04 *Requirements of the Contract Documents*

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

3.05 *Reuse of Documents*

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

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after

the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

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

4.05 *Delays in Contractor's Progress*

A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.

B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption,

or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. Abnormal weather conditions;
 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable

accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.

- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

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

5.02 *Use of Site and Other Areas*

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

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
 - 2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
 - 3. Technical Data contained in such reports and drawings.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.
- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and

procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.
- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's

review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;
 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility. C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

- E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
 2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 3. Technical Data contained in such reports and drawings.

- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition

- and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
 - H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
 - I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
 - J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
 - K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized

in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

- C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties. H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

4. apply with respect to the performance of the Work, whether such performance is 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; and
 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and
 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.

- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
 - 1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 - 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.

1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights 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 insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services

under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *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.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *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 maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. 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 will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

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

7.05 “Or Equals”

- A. *Contractor’s Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an “or equal” item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) 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) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
 - b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor’s Expense:* Contractor shall provide all data in support of any proposed “or equal” item at Contractor’s expense.
- C. *Engineer’s Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each “or-equal” request. Engineer may require Contractor to furnish additional data about the proposed “or-equal” item. Engineer will be the sole judge of acceptability. No “or equal” item will be ordered, furnished, installed, or utilized until Engineer’s review is complete and Engineer determines that the proposed item is an “or-equal,” which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer’s Determination:* Neither approval nor denial of an “or-equal” request will result in any change in Contract Price. The Engineer’s denial of an “or-equal” request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an “or-equal” item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

A. *Contractor’s Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in

Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or

- otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
 - F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
 - G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
 - H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
 - I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
 - J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
 - K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
 - L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
 - M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *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 an 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 will be disclosed in the Contract Documents.

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

7.09 *Permits*

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

7.10 *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.

7.11 *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. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all

fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

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

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any

other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

- E. 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.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. 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.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 Hazard Communication Programs

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

7.15 Emergencies

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent 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 by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 Submittals

A. Shop Drawing and Sample Requirements

1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.
3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. Submittal Procedures for Shop Drawings and Samples: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. Shop Drawings

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

2. Samples

- a. Contractor shall submit the number of Samples required in the Specifications.

- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Engineer's Review of Shop Drawings and Samples

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. 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, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for

review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.

2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.

- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:

1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, or improper modification, 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.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
1. Observations by Engineer;
 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. Use or occupancy of the Work or any part thereof by Owner;
 5. Any review and approval of a Shop Drawing or Sample submittal;
 6. The issuance of a notice of acceptability by Engineer;
 7. The end of the correction period established in Paragraph 15.08;
 8. Any inspection, test, or approval by others; or
 9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (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 from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom,

but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.

- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will 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.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, 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.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to

arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

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

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

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

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

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

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

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

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

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.
- E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

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

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will 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 Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

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

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;

2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.
- B. If Owner has issued a Work Change Directive and:
1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

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

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12. B. An adjustment in the Contract Price will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
 - 1. A mutually acceptable fixed fee; or
 - 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
- b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
- c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
- d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
- f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed

change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
 4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals***: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.

2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will 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 accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will 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, which 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 will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of 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, 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.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), 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 include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
2. The cost of purchasing, renting, or furnishing small tools and hand tools.
3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
5. 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.
6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. Contractor's Fee

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

E. Documentation and Audit: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions,

drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 *Allowances*

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

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's 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 for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. *Adjustments in Unit Price*
1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:

- a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

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

14.01 Access to Work

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

14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;

4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

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

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all

claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

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

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. 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 must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered

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

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

C. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;

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

D. *Payment Becomes Due*

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

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental

Condition for which Contractor is responsible;

- e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider

the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.

2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for

which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. 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. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. correct the defective repairs to the Site or such adjacent areas;
 2. correct such defective Work;
 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all 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). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. 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.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and

damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

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

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change

Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 2. agree with the other party to submit the dispute to another dispute resolution process; or
 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in

any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is 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.

18.09 *Successors and Assigns*

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

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

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

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

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

No suggested Supplementary Conditions in this Article.

ARTICLE 2—PRELIMINARY MATTERS

No suggested Supplementary Conditions in this Article.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE No

suggested Supplementary Conditions in this Article.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.05 *Delays in Contractor's Progress*

SC-4.05 Amend Paragraph 4.05.C by adding the following subparagraphs:

5. *Weather-Related Delays*

- a. If "abnormal weather conditions" as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled.
- b. The existence of abnormal weather conditions will be determined on a month-by-month basis in accordance with the following:

- 1) Every workday on which one or more of the following conditions exist will be considered a “bad weather day”:
 - i) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day (regardless of whether such preceding day is a workday) through 7:00 p.m. on the workday in question equals or exceeds **the historical mean of precipitation by more than one standard deviation** (as rain equivalent, based on the snow/rain conversion indicated in the table entitled Foreseeable Bad Weather Days; such table is hereby incorporated in this SC-4.05.C by reference.
 - ii) Ambient outdoor air temperature at 11:00 a.m. is equal to or less than the following low temperature threshold: **0** degrees Fahrenheit; or, at 3:00 p.m. the ambient outdoor temperature is equal to or greater than the following high temperature threshold: **100** degrees Fahrenheit.
- 2) Determination of actual bad weather days during performance of the Work will be based on the weather records measured and recorded by **National Weather Service** weather monitoring station at **Erie Municipal Airport**.

ARTICLE 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS

5.03 *Subsurface and Physical Conditions*

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely: **[If there are no such drawings, so indicate in the table.]**

Drawings Title	Date of Drawings	Technical Data

- G. Contractor may obtain copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents from Engineer.

5.06 *Hazardous Environmental Conditions*

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

Report Title	Date of Report	Technical Data
No such reports		[Identify Technical Data]

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
No such drawings		[Identify Technical Data]

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:

1. *Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form of EJCDC® C-610, Performance Bond (2010, 2013, or 2018 edition).
2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® C-615, Payment Bond (2010, 2013, or 2018 edition).

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.B:

1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be **2** years after Substantial Completion.
2. After Substantial Completion, Contractor shall furnish a warranty bond issued in the form of EJCDC® C-612, Warranty Bond (2018). The warranty bond must be in a bond amount of **15** percent of the final Contract Price. The warranty bond period will extend to a date **2** years after Substantial Completion of the Work. Contractor shall deliver the fully executed warranty bond to Owner prior to or with the final application for payment, and in any event no later than 11 months after Substantial Completion.
3. The warranty bond must be issued by the same surety that issues the performance bond required under Paragraph 6.01.A of the General Conditions.

6.02 *Insurance—General Provisions*

SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:

1. Contractor may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the Project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.

6.03 *Contractor's Insurance*

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

- E. *Workers' Compensation and Employer's Liability:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Employer's Liability	
Each accident	\$100,000

Each employee	\$100,000
Policy limit	\$100,000
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	\$100,000

- F. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
 2. damages insured by reasonably available personal injury liability coverage, and
 3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
 - a. Such insurance must be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
 4. Underground, explosion, and collapse coverage.
 5. Personal injury coverage.
 6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
 7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.

H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:

1. Any modification of the standard definition of “insured contract” (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
2. Any exclusion for water intrusion or water damage.
3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
4. Any exclusion of coverage relating to earth subsidence or movement.
5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability (other than worker’s compensation).
6. Any limitation or exclusion based on the nature of Contractor’s work.
7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. *Commercial General Liability—Minimum Policy Limits*

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$1,000,000
Products—Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$500,000
Bodily Injury and Property Damage—Each Occurrence	\$500,000

J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$2,000,000

K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
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Exhibit C—Geotechnical Baseline Report Supplement to the Supplementary Conditions.

EJCDC® C-800, Supplementary Conditions of the Construction Contract.

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Each Occurrence	\$2,000,000
General Aggregate	\$10,000

6.04 *Builder's Risk and Other Property Insurance*

SC-6.04 Delete Paragraph 6.04.A and insert the following in its place:

A. Owner shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions: F.

Builder's Risk Requirements: The builder's risk insurance must:

1. be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).
 - a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
 - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.
2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of contractors, engineers, and architects).

Exhibit C—Geotechnical Baseline Report Supplement to the Supplementary Conditions.

EJCDC® C-800, Supplementary Conditions of the Construction Contract.

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4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier). If this coverage is subject to a sublimit, such sublimit will be a minimum of \$[amount].
5. extend to cover damage or loss to insured property while in transit. If this coverage is subject to a sublimit, such sublimit will be a minimum of \$[amount].
6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
8. include performance/hot testing and start-up, if applicable.
9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
- 10 include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds."

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provision:

G. *Coverage for Completion Delays:* The builder's risk policy will include, for the benefit of Owner, loss of revenue and soft cost coverage for losses arising from delays in completion that result from covered physical losses or damage. Such coverage will include, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, compensation for loss of net revenues, rental costs, and attorneys' fees and engineering or other consultants' fees, if not otherwise covered.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.10 Taxes

SC-7.10 Add a new paragraph immediately after Paragraph 7.10.A:

A. Owner is exempt from payment of sales and compensating use taxes of the State of Colorado and of cities and counties thereof on all materials to be incorporated into the Work.

1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

ARTICLE 8—OTHER WORK AT THE SITE

No Supplementary Conditions in this Article.

ARTICLE 9—OWNER’S RESPONSIBILITIES

No Supplementary Conditions in this Article.

ARTICLE 10—ENGINEER’S STATUS DURING CONSTRUCTION

No Supplementary Conditions in this Article.

ARTICLE 11—CHANGES TO THE CONTRACT

No suggested Supplementary Conditions in this Article.

ARTICLE 12—CLAIMS

No suggested Supplementary Conditions in this Article.

ARTICLE 13—COST OF WORK; ALLOWANCES, UNIT PRICE WORK

No suggested Supplementary Conditions in this Article.

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

No suggested Supplementary Conditions in this Article.

ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

15.01 *Progress Payments*

SC-15.01 Add the following new Paragraph 15.01.F:

- F. For contracts in which the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work (as measured by reference to the Schedule of Values), or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that Contractor prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price (if any), through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

15.03 *Substantial Completion*

SC-15.03 Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such reinspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

15.08 *Correction Period*

SC-15.08 Add the following new Paragraph 15.08.G:

- G. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be the number of years set forth in SC-6.01.B.1; or if no such revision has been made in SC-6.01.B, then the correction period is hereby specified to be **2** years after Substantial Completion.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

No suggested Supplementary Conditions in this Article.

ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

17.02 *Arbitration*

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

17.02 *Arbitration*

- A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-17.02). Any controversy or claim in the amount of \$100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 17, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.
- C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated

under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.

- D. The Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Contract permits them to do so.
- E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.
- F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- G. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
 - 1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;
 - 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;
 - 3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and
 - 4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.
- H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

17.03 *Attorneys' Fees*

SC-17.03 Add the following new paragraph immediately after Paragraph 17.02.

17.03 *Attorneys' Fees*

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

ARTICLE 18—MISCELLANEOUS

SC-18.11 Add the following new paragraph immediately after Paragraph 18.10:

- A. Owner is City of Louisville and their duly authorized agents. All notices, letters and communication directed to Owner shall be addressed and delivered to RVI Incorporated, who is designated representative (below).

RVI, Incorporated

Attn: XXX

Street

City, State, ZIP

- B. All duties and responsibilities assigned to Engineer in the Contract Documents, with the corresponding rights and authority will be assumed by RVI, Incorporated and their duly authorized agents.
- C. The business addresses of Contractor given in contract for the work and Contractor's office at the site of the Work are hereby designated as the places to which all notices, letters, and other communication to Contractor will be delivered
- D. Either Owner, Engineer, or Contractor may change their address at any time by an instrument in writing delivered to the other parties.

SC-18.12 Add the following new paragraph immediately after Paragraph 18.12:

The cross-referencing or specification sections under the heading "Related Sections" and elsewhere within each specification section is intended as an aid to the Contractor and shall not relieve the Contractor from his responsibility to coordinate the Work under the Contract Documents. Listings of cross-references are not intended to be comprehensive. The omission of a cross-reference to an additional or related requirement shall not relieve the Contractor of his obligation to provide a complete Project.