

Seneca Nation
Contract Specifications
For
Sullivan Hollow Water Treatment Plant Upgrades
Project

June 2021



Prepared by:
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Seneca Nation Health System
987 R.C. Hoag Dr.
Salamanca, NY 14779

**Notice to Contractors For
Sullivan Hollow Water Treatment Plant Upgrades Project
On the Allegany Territory of the Seneca Nation**

The project involves replacement of the existing water treatment plant, installation of new watermain and related work located in the Sullivan Hollow development off Route 417 on the Allegany Territory of the Seneca Nation in the Town of Kill Buck, New York.

A pre-bid walkthrough is scheduled for June 29, 2021 at 10 am. Bidders will meet at the existing water treatment plant between North and South Authority Roads in Kill Buck, NY 14748.

Bids for the construction will be received until 10:30 a.m. local time on Wednesday July 7th, 2021 (and publicly opened and read aloud at 10:30 a.m.) at the office of the Owner (Joel Merrill, P.E.) at the Seneca Nation of Indians Health System at 987 R.C. Hoag Drive, Salamanca NY 14779. This work will be conducted under one prime contract. Each Bid must be made using the **forms provided in the Contract Documents. All forms within the Contractor's Bid Proposal portion of the Contract Documents are required to be filled out.**

Minimum Wage Rates shall be as determined by the Davis-Bacon wage rates (work is located in Cattaraugus County, New York), available at <https://beta.sam.gov>

Contract Documents may be obtained at the office of the Owner (Joel Merrill, P.E.):

- Seneca Nation Health System (LRJHC)
987 R.C. Hoag Dr.
Salamanca, NY 14779
(716) 945-5894 x5277

Bids must be submitted in sealed envelopes with the Project Name plainly written on the outside at address above. No Bidder may withdraw his Bid within 45 days after the Bid Opening. The successful Bidder must furnish Performance and Payment Bonds, each in an amount at least equal to the Total Bid, issued by a surety company acceptable to the Seneca Nation. Bidders are not to include in their Bid, sales and compensating use taxes of the State of New York and of counties or cities on materials, equipment, and supplies to be incorporated into the Project. The Seneca Nation requires that Bidders certify, under penalty of perjury, that the Bids have been prepared without collusion with other Bidders, subcontractors, suppliers, etc. A certification is included with the Bid Proposal which each Bidder must sign in the space provided.

The Seneca Nation reserves the right to reject any or all bids offered.

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INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS

Terms used in these Instructions to Bidders, which are defined in the Standard General Conditions of the Construction Contract (C-700, 2013 Edition), have the meanings assigned to them in the General Conditions. The term "Bidder" means one who submits a Bid directly to Owner, as distinct from a sub-bidder, who submits a bid to a Bidder. The term "Successful Bidder" means the lowest, qualified, responsible and responsive Bidder to whom Owner makes an award. The term "Bidding Documents" includes the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

2. COPIES OF BIDDING DOCUMENTS

2.1 Complete sets of the Bidding Documents stated in the Advertisement or Invitation to Bid may be obtained at the locations stated therein.

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

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

3. QUALIFICATIONS OF BIDDERS

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days after Bid opening upon Owner's request written evidence, such as financial data, previous experience, present commitments, and other such data as may be called for in the Bid Proposal. Each Bid must contain evidence of Bidder's qualification to do business in the jurisdiction where the Project is located or covenant to obtain such qualification prior to award of the contract.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

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

4.1.1 To examine thoroughly the Contract Documents and other related data identified in the Bidding Documents (including "technical data" referred to below);

4.1.2 To visit the site to become familiar with and satisfy Bidder as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work;

4.1.3 To consider federal and Nation laws and regulations that may affect cost, progress, performance or furnishing of the Work;

4.1.4 To study and carefully correlate Bidder's knowledge and observations with the Contract Documents and such other related data; and

4.1.5 To promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.

4.2 Reference is made to the Supplementary Conditions for identification of:

4.2.1 Those reports of explorations and tests of subsurface conditions at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such reports but not upon other data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

4.2.2 Those drawings of physical conditions in or relating to existing surface and subsurface conditions (except Underground Facilities) which are at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such drawings but not upon other data, interpretations, opinions or information shown or indicated in such drawings or otherwise relating to such structures, nor upon the completeness thereof for the purposes of bidding or construction.

Copies of such reports and drawings have been made available by Owner to any Bidder in the Appendices to the Technical Specifications. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained herein upon which Bidder is entitled to rely as provided in Paragraph 4.2 of the General Conditions has been identified and established in Paragraph SC-4.2 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.3 Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

4.4 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Contract Documents due to differing or unanticipated conditions appear in Paragraphs 4.2 and 4.3 of the General Conditions.

4.5 Before submitting a Bid, each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

4.6 On request in advance, and after indemnifying Owner from any and all claims of any kind whatsoever arising directly, indirectly, or consequently as a result of Bidder or its representative having access to the site, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests and studies.

4.7 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by the Engineer is acceptable to Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

5. AVAILABILITY OF LANDS FOR WORK, ETC.

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

6. INTERPRETATION AND ADDENDA

6.1 All questions about the meaning or intent of the Bidding Documents are to be directed to the Project Manager in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed, sent by facsimile, or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than five (5) days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6.2 Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer.

6.3 Failure of a Bidder to receive any Addendum, or to acknowledge receipt thereof, will not relieve such Bidder from conforming with the requirements which such Addendum imposes on his Bid or the Contract Documents, and may subject his Bid to disqualification by Owner.

7. BID SECURITY

7.1 No Bid Security is required for this project

8. CONTRACT TIMES

The number of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the Contract Times) are set forth in the Agreement. Intermediate stages to be completed by prescribed Milestone Dates are also set forth in the Agreement.

9. LIQUIDATED DAMAGES AND ENGINEERING CHARGES

Provisions for liquidated damages, if any, and engineering charges resulting from delay in completion, are set forth in the Agreement.

10. SUBSTITUTE OR "OR-EQUAL" ITEMS

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Paragraphs 6.7.1, 6.7.2 and 6.7.3 of the General Conditions, Supplementary Conditions, and in the General Requirements. Disapproval or rejection of an "or-equal" or substitute by Engineer shall not result in any modification to the Contract amount as originally bid.

11. BID FORMS AND CERTIFICATION

11.1 The Bid forms, certificates, etc., required for preparing a Bid appear in the Contractor's Bid Proposal section of the bound Bidding Documents. All bidders shall utilize the Contractor's Bid Proposal pages in preparing and submitting their Bid. Forms must be completed by printing neatly in black ink.

11.2 Fill in blanks on Page BP-1, including identification of Contract for which a Bid is being submitted, Bidder's Name, and listing of Addenda received by Bidders.

11.3 Fill out the appropriate blanks in the Schedule of Prices by inserting amounts, both in words and in figures, consistent with the Contract for which a Bid is being submitted. Compute and enter Total Bid Price or Prices, as set forth in the Schedule of Prices.

11.4 Bids by corporations must be executed in the corporate name by the President or Vice-President (or other authorized corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

11.5 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear above the signature and the official address of the partnership must be shown below the signature.

11.6 All names must be typed or printed above the signature.

11.7 The address and telephone number for communications regarding the Bid must be shown in the space provided.

11.8 Attach Bid security. Have Surety Company execute attached Statement of Surety's Intent.

11.9 Execute the certifications, assurances or affidavits which are attached to the Bid Form and which are identified therein.

12. SUBMISSION OF BIDS

12.1 Bids shall be submitted at the time and place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), and the name and address of the Bidder and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it. Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.

12.2 The Bid constitutes all elements of the Bid Form and its attachments, as furnished to prospective Bidders, and as amended by applicable Addenda, if any, during the bidding period.

13. MODIFICATION AND WITHDRAWAL OF BIDS

13.1 A Bidder may withdraw his bid where a unilateral error or mistake is discovered in the bid, after a showing of the following:

13.1.1 The mistake is known or made known to the OWNER prior to the awarding of the Contract or within three days after the opening of the bid, whichever period is shorter; and

13.1.2 The price bid was based on an error of such magnitude that enforcement would be unconscionable; and

13.1.3 The bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and

13.1.4 The error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the bid, which can be shown by objective inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and

13.1.5 It is possible to place the OWNER in status quo ante; the same position he enjoyed prior to bid.

13.2 The sole remedy for a bid mistake shall be withdrawal of the bid and the return of the bid bond or other security, if any, to the Bidder. Thereafter, the OWNER may, in its discretion award the Contract to the next lowest bidder or rebid to Contract.

14. OPENING OF BIDS

14.1 Bids will be opened as indicated in the Advertisement or Invitation to Bid. Only the total bid prices and major alternate prices will be read aloud.

15. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

15.1 All Bids will remain subject to acceptance for forty-five days after the day of Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

16. AWARD OF CONTRACT

16.1 Owner reserves the right to reject any and all Bids, including without limitation, the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bid and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time or changes in the Work and Award a Contract to the Successful Bidder. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words. Bids containing incomplete or no price information for any Bid item which thus prevents evaluation of the extended total for that Bid item will be rejected.

16.2 In evaluating Bids, Owner will consider the qualifications of the Bidders, compliance with the Tribal Employment Rights Ordinance (“TERO”), whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

16.3 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

16.4 If the Contract is to be awarded, it will be awarded to the responsible Bidder who submits the lowest Bid Price, consistent with TERO, and whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Project.

16.5 If the Contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within forty-five days after the day of the bid opening.

17. CONTRACT SECURITY

17.1 Paragraphs 5.1 of the General Conditions and the Supplementary Conditions set forth Owner's requirements as to Performance and Payment Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required Performance and Payment Bonds for the full amount of the Contract Price.

17.2 Article 5 of the General Conditions and the Supplementary Conditions set forth the Owner's requirements as to the types and extent of insurance coverage's which are to be furnished and maintained by the Contractor. When the Successful Bidder delivers the executed Agreement to Owner, the required Certificate of Insurance shall be submitted at that time.

18. SIGNING OF AGREEMENT

18.1 The required number of the unsigned counterparts of the Agreement, together with attached Contract Documents, will be forwarded to the Successful Bidder following issuance of the Notice of Award. Within fifteen days thereafter, the Contractor shall sign and deliver to the Owner all counterparts of the Agreement, together with attached Contract Documents, the required Contract Security, and duly executed acknowledgement of signatures. Within ten days thereafter, provided that signatures are in order and Contract Security is acceptable, Owner will sign all counterparts of the Agreement, including duly executed acknowledgment of signature, and return one executed copy thereof to Contractor with attached Contract Documents. Each counterpart is to be accompanied by a complete set of Drawings with appropriate identification.

19. COPIES OF DOCUMENTS

19.1 Paragraph 2.2 of the Supplementary Conditions identifies the number of copies of Contract Documents which OWNER will furnish to CONTRACTOR and the way for CONTRACTOR to obtain additional copies.

Additional copies of Contract Documents may be purchased at ENGINEER's normal rates for reproduction.

20. PRE-BID CONFERENCE

20.1 A pre-bid conference will be held if indicated in the Advertisement. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

21. SALES AND USE TAXES

21.1 Owner is exempt from State and County Sales and Use Taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Contract Price. Refer to Supplementary Conditions; paragraph SC-6.15 for additional information.

22. NOT USED

23. IDENTITY OF SUBCONTRACTORS AND SUPPLIERS

23.1 The identity of certain subcontractors, suppliers, and other person and organizations (including those who are to furnish the principal items of material and equipment) is to be submitted to Owner in advance of the specified date prior to the Effective Date of the Agreement. Therefore, the apparent Successful Bidder and any other Bidder so requested, shall within seven days after the Bid opening, submit to Owner a list of such subcontractors, suppliers, and other persons and organizations proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each subcontractor, supplier, person or organization if requested by Owner.

24. EQUAL OPPORTUNITY

24.1 The Successful Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap or national origin. The Successful Bidder will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, handicap or national origin. Such action shall include but not be limited to, 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. The Successful Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non discrimination clause.

24.2 The Successful Bidder will state in all solicitations or advertisements for employees placed by or on behalf of the Bidder that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, age, sex, marital status, national origin, ancestry, present or past history of mental disorder, mental retardation or physical disability, including, but not limited to, blindness.

24.3 The Successful Bidder will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Successful Bidder's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

25. NATIVE AMERICAN UTILIZATION POLICY

25.1 The Successful Bidder shall acknowledge by the Seneca Nation of Indians Tribal Employment Rights Ordinance (“TERO”). Each Bidder will be required to maximize their efforts to involve Native American owned firms as well as Native American trade persons in each phase of the Project and to be bound by and fully comply with TERO and any amendments or modifications thereto, including but not limited to any actions taken by the Seneca Nation of Indians pursuant to TERO.

26. TRIBAL HISTORIC PRESERVATION POLICY

26.1 The Seneca Nation adheres to the Seneca Nation of Indians Tribal Historic Preservation Officer Policies and Procedures (“THPO”), a copy of which will have been furnished to the Successful Bidder. Bidder agrees that the Nation’s THPO will be incorporated in all contracts pertaining to the construction of the Project. The Successful Bidder, including its employees, Subcontractors, agents, material men and vendors, will be required to comply with the requirements of THPO, including strict adherence to THPO protocol in the event of the discovery of human remains and associated funerary objects.

27. CONFIDENTIALITY

Successful Bidder shall not disclose to third parties technical or other information disclosed by Owner or Owner’s agents or authorized representatives to Successful Bidder during performance of construction Work by Successful Bidder provided such information is not in the possession of Successful Bidder at the time of disclosure, or is not then and does not become a part of the public knowledge or literature. Technical Information includes all drawings, specifications, notes, letters, verbal communications, and any information relating to the product, process, or Project name. Successful Bidder represents that all technical and administrative employees of Successful Bidder have signed confidentiality agreements with Successful Bidder which bind them to observe this confidentiality requirement. If in the performance of Work for Owner, it is necessary for Successful Bidder to disclose confidential information to third parties, such disclosure shall be made only after prior written approval by Owner and Successful Bidder shall require such third parties to sign similar confidentiality agreements.

28. EXTRA-NATION COMMUNICATIONS

28.1 The Successful Bidder acknowledges the sovereignty of the Seneca Nation of Indians as separate and apart from the United States and state and local governments. The Successful Bidder shall not communicate in any way, directly or indirectly, with any federal, state or local government or other instrumentality relating to any matter related to the Project, including but not limited to the Bidding Documents, except to the extent the Successful Bidder has received the prior written authorization of Owner. This prohibition is intended to and shall extend to all those acting through or under the Successful Bidder, including but not limited to the Successful Bidder's employees, Subcontractors, agents, material men and vendors. Notwithstanding any other provision of these Instructions, if the Successful Bidder, or its employees, Subcontractors, agents, material men and vendors, fail to comply with this prohibition regarding extra-Nation communications, Owner shall have the right to immediately terminate the Contract and pursue any and all other rights available at law or in equity.

29. SALVAGEABLE MATERIALS

29.1 Owner shall have the right of first refusal to any salvageable materials removed from the Project site, including to but not limited to any steel, copper and scrap iron. Successful Bidder shall inform Owner at least one week prior to the expected date(s) of availability of any such salvageable materials.

CONTRACTOR'S BID PROPOSAL
Sullivan Hollow Water Treatment Project

This Bid is submitted to the Seneca Nation of Indians

By: _____
(Name of Bidder)

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Times included in this Bid and the Agreement, respectively, and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for forty-five days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of OWNER's Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:
 - (a) BIDDER has examined and carefully studied the Bidding Documents and the following Addenda, receipt of all which is hereby acknowledged:

Date

Number

_____	_____
_____	_____
_____	_____
_____	_____

- (b) BIDDER has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work.
 - (c) BIDDER is familiar with and is satisfied as to all federal and Nation regulations that may affect cost, performance and furnishing of the Work.

Sullivan Hollow Water Treatment Project

- (d) BIDDER acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Admin Campus Watermain Project Bidding Documents with respect to Underground Facilities at or contiguous to the site. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by BIDDER and safety precautions and programs incident thereto. BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.
- (e) BIDDER is aware of the general nature of Work to be performed by OWNER and others at the site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
- (f) BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- (g) BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which the Bid is submitted.
- (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

Sullivan Hollow Water Treatment Project

4. (a) BIDDER will complete the Work for the prices entered in the Schedule of Bid Items which follows.
 - (b) The BIDDER has included the cost of all Work described in the Contract Documents and if any Work is not listed in the Bid Item Descriptions, the BIDDER has included the cost in the Bid Item under which it most logically ought to have been included.
 - (c) Unit Prices have been computed in accordance with paragraph 11.9.2 of the General Conditions. BIDDER acknowledges that quantities are not guaranteed and final payment will be based on actual quantities determined as provided in the Contract Documents.
5. BIDDER agrees that the Work will be completed within the time periods stipulated in the Agreement from the date when the Contract Time commences to run as provided in paragraph 2.3 of the General and Supplementary Conditions.

BIDDER accepts the provisions of the Agreement as to Engineering Charges for Delays in Completion and provisions for Liquidated Damages, if any, and other definable damages, if any in the event of failure to complete the Work on time.

Sullivan Hollow Water Treatment Project

6. BIDDER and his surety, where appropriate, have completed and executed the following documents which are attached to and made a condition of this Bid:

- (a) Required BIDDERS's Qualification Statement with supporting data.
- (b) Non-Collusive Bidding Certification
- (c) Statement of Surety's Intent

7. Communications concerning this Bid shall be addressed to:

The address of BIDDER indicated below.

The following address: _____

8. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

THIS BID SUBMITTED ON _____, 20____.

Sullivan Hollow Water Treatment Project

9. Signature of BIDDER and other appropriate information, if BIDDER is:

AN INDIVIDUAL

By: _____
(SEAL)

(Individual's Typed or Printed Name)

(Signature)

doing business as _____

Business address: _____

Phone No.: _____

A PARTNERSHIP

By: _____
(SEAL)

(Firm Name)

(Partner's Typed or Printed Name)

(Signature)

Business address: _____

Phone No.: _____

Sullivan Hollow Water Treatment Project

A CORPORATION

By: _____
(Corporation Name)

(State of Incorporation)

By: _____
(Typed or Printed Name & Title of Person Authorized to Sign)

(Signature)

(Corporate Seal)

Attest: _____
(Secretary)

Business Address: _____

Phone No.: _____

A JOINT VENTURE

By: _____
(Typed or Printed Name)

(Signature)

(Address)

By: _____
(Typed or Printed Name)

(Signature)

(Address)

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

ATTACHMENTS

BIDDER and his surety, where appropriate, have completed and executed the attached documents which are identified below.

BASE BID FORM

BIDDER'S QUALIFICATION STATEMENT

NON-COLLUSIVE BIDDING CERTIFICATION

STATEMENT OF SURETY'S INTENT

Seneca Nation

Sullivan Hollow Water Treatment Plant Upgrades

BID TO:

Joel Merrill

Seneca Nation Health System

Lionel R John Health Center

987 RC Hoag Drive

Salamanca, New York 14779

BID FROM: _____

(Print or Type Name of Bidder)

(/A Corporation/A Partnership/A Limited Liability Company/An Individual/A Joint Venture/[Bidder to strike out inapplicable terms.]

Gentlemen:

- A.01 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the price(s) and within the times indicated in this Bid and in accordance with the Bidding Documents.

- 2.01 Bidder accepts all of the terms and conditions of the Notice to Bidders and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain open subject to acceptance for the time period set forth in the Instruction to Bidders. Bidder will sign the Agreement and will furnish the required contract security, and other required documents within the time periods set forth in the Bidding Documents.

- 3.01 In submitting this Bid, Bidder represents, as set forth in the Agreement, that:
 - A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, if any, and the following Addenda receipt of all of which is hereby acknowledged.

<u>Addendum No.</u>	<u>Date Received</u>	<u>Addendum No.</u>	<u>Date Received</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance for the Work.
- C. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and (2) reports and drawings of a Hazardous Environmental Condition identified at the Site, if any, which have been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.
- E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may effect cost, progress or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance of the Work at the price(s) and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents and all additional examinations, investigations, explorations, tests, studies and data with the Bidding Documents.
- I. Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by ENGINEER is acceptable to Bidder.

- J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
 - K. The quantities for the unit price items are unpredictable and the ENGINEER has inserted certain quantities in the proposal to be used solely for purpose of comparison of bids.
 - L. Fixed minimum unit prices may have been established for some of the items in the Bid. The prices represent the minimum amounts, which will be paid the CONTRACTOR for these items. The Bidder shall include a price not less than the stated minimum. If in the opinion of the Bidder these prices do not reflect the actual value of the work involved, the Bidder may void the given fixed minimum unit price for that specific item and enter a higher unit price in the spaces provided in the Bid Form sheets. Bidder's Proposals received which include a unit price less than the stated minimum shall be adjusted to meet the fixed minimum unit price.
- 4.01 Bidder further represents that this Bid is genuine and is not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER; and that no person or persons acting in any official capacity for the OWNER are directly or indirectly interested in this Bid, or in any portion of the profit thereof.
- 5.01 Bidder will complete the Work in accordance with the Contract Documents for:

Sullivan Hollow Water Treatment Project

BASE BID

<u>Description</u>	<u>Estimated Quantities</u>	<u>Computed Totals</u>
Item 1 – Construction of Water Treatment Facility and Fire Suppression Piping at Sullivan Hollow _____ Dollars and _____ Cents (\$ _____) Per Lump Sum		1 LS \$ _____

TOTAL BASE BID AMOUNT (This total is for convenience in comparing Bids and is not an official part of this Bid.) \$ _____
(Figures)

_____ Dollars and _____ Cents
(Written Amount)

Unit prices have been computed in accordance with paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities of items of Unit Price Work are not guaranteed and final payment will be based on actual quantities of Unit Price Work performed as provided in the Contract Documents.

6.01 Bidder agrees that the Work will be substantially complete and completed and ready for final payment in accordance with Paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated and special damages in the event of failure to complete the Work within the times specified above.

7.01 The following documents are attached to and made a condition of this Bid:

- A. Non-Collusive Bidding Certification.
- B. Required Bidder Qualifications Statement with supporting data.

8.01 The terms used in this Bid will have the meanings indicated in the Instructions to Bidders and the General Conditions and Supplementary Conditions.

Respectfully submitted on _____, 20__.

- Note:
- 1.) Amounts are to be shown on both words and figures. In the event of a discrepancy, the amount(s) shown in words shall govern.
 - 2.) The bidder's attention is called to the fact that the OWNER reserves the right to reject any and all bids received. Also, the OWNER reserves the right to compare bids on the basis of available funding. In addition, the OWNER reserves the right to negotiate time schedules for construction based on the work qualifications of the successful bidder.

BIDDER'S QUALIFICATION STATEMENT

To induce the making of this Contract, the Bidder represents to the Owner the following, as evidence of Bidder's Qualifications to perform the work herein specified:

1. How many years has your organization been in business under the name in which you propose to execute this Contract?
 _____ Years

2. What projects of character similar to that proposed has your present organization completed? Give the information indicated by the following tabulations.

Name, Address, and Phone No. of Owner for whom work was done	Description of Work	Approximate Amount of Contract	Approximate Date Work was done

3. Has your present organization ever failed to complete any work awarded to it? If so, state when, where and why. _____

4. Do you have, or can you procure the necessary personnel, equipment, facilities and financial resources to immediately undertake and satisfactorily complete the work contemplated in this Contract? _____

NON-COLLUSIVE BIDDING CERTIFICATION

BY SUBMISSION OF THIS BID OR PROPOSAL, THE BIDDER CERTIFIES THAT:

1. This bid or proposal has been independently arrived at without collusion with any other bidder or with any other competitor or potential competitor.
2. This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids or proposals for this project, to any other bidder, competitor or potential competitor.
3. No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal.
4. The person signing this bid or proposal certifies that he/she fully informed himself/herself regarding the accuracy of the statements contained in this certification, and under the penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder as well as to the person signing in its behalf.

Bidder

By: _____
Signature

Print Name

Title

Date: _____

Sullivan Hollow Water Treatment Project

Statement of Surety's Intent

To the Seneca Nation of Indians (Owner):

We have reviewed the Bid of _____
(Contractor)

of _____
(Address)

for the construction Sullivan Hollow Water Treatment Project, Bids for which will be received on _____
(*bid opening date*)

and wish to advise that should this Bid of the Contractor be accepted and the Contract awarded to him, it is our present intention to become surety on the performance bond and the payment bond required by the Contract.

Any arrangement for the bonds required by the Contract is a matter between the Contractor and ourselves and we assume no liability to you or third parties if for any reason we do not execute the requisite bonds.

We are duly authorized to do business in the State of _____

Attest:

Surety's Authorized Signature(s)

Attach Power of Attorney

(Corporate seal if any. If no seal, write "No Seal" across this place and sign.)

(This form must be completed prior to submission of the bid)

Agreement



AGREEMENT

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the ____ day of _____ in the year 20__ by and between the Seneca Nation of Indians (hereinafter called OWNER) and _____ (hereinafter called CONTRACTOR).

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

ARTICLE 1 - WORK

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

Sullivan Hollow Water Treatment Plant Upgrades Project

ARTICLE 2 - ENGINEER

The Project has been designed by Seneca Nation Health Engineer who is hereinafter called ENGINEER, assume all duties and responsibilities and have the rights and authority assigned in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIMES

3.1 Time is of the essence of this agreement. The Work shall be substantially complete within 120 calendar days* from the date when the Contract Times commence to run as provided in paragraph 2.3 of the General and Supplementary Conditions.

3.2 Damages for Delay in Completion

3.2.1 Engineering Charges: If the Work is not substantially completed, or is not completed and ready for final payment, within the respective maximum allowable times specified in paragraph 3.1, including any extensions allowed in accordance with Article 12 of the General Conditions, engineering charges incurred by the OWNER after the aforesaid completion time will be charged to the CONTRACTOR in addition to the total amount of liquidated damages and other definable damages to be assessed pursuant to paragraphs 3.2.2 and 3.2.3 below and deducted from monies owed the CONTRACTOR. The amount will be determined by OWNER, based on ENGINEER's accounting records and fee invoices submitted to OWNER for services rendered by ENGINEER under Article 9 of the General Conditions during the applicable time periods.

3.2.2 Liquidated Damages: OWNER and CONTRACTOR recognize that time is of the essence in this Agreement, and that OWNER will suffer financial loss in addition to extra engineering costs if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They 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), CONTRACTOR shall pay OWNER five-hundred dollars (\$500) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete, plus any engineering charges assessed pursuant to paragraph 3.2.1 above.

After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER five-hundred dollars (\$500) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

The calculated amounts of liquidated damages will be deducted from payments made to CONTRACTOR beginning with the payment period within which liquidated damages have begun. However, at his option, OWNER may deduct the total amount of such damages from CONTRACTOR's final payment.

Other Definable Damages: CONTRACTOR agrees that, to the extent that fines may be imposed on OWNER by any governmental authorities due to missed completion dates, water quality violations, the cost of which cannot be known at the outset of the project, but will be easily determined at the time they are incurred, and such fines are imposed on OWNER due to CONTRACTOR's failure to meet contract requirements, CONTRACTOR shall pay OWNER the actual cost of such fines imposed.

ARTICLE 4 - CONTRACT PRICE

- 4.1 The OWNER will pay CONTRACTOR for completion of the Work in accordance with the Contract Documents the amount of the Bid Price stated in the CONTRACTOR's Bid Proposal, attached hereto as Attachment 1, hereby identified as the Contract Price.
- 4.2 When unit bid price items are included in the Contract Price, the quantities of various units contained in the Bid Proposal are estimated and payment will be made only for the actual quantities of units that are incorporated in the Work, as determined by the ENGINEER in accordance with paragraph 9.10 of the General Conditions.

ARTICLE 5 - PAYMENT PROCEDURES

- 5.1 CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions and Article 14 of the Supplementary Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions and Supplementary Conditions.
- 5.2 Progress Payments: OWNER will make monthly progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment, as recommended by ENGINEER during construction. Payments will be on the basis of the progress of the Work measured, by the schedule of values established in paragraph 2.9 of the General and Supplementary Conditions, and in the case of unit price items, on the basis of quantities incorporated in the Work. Payments will be in an amount equal to 90% of the Work completed (with the balance being retained) and 90% of the value of undamaged materials and equipment not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to OWNER in accordance with paragraph 14.2 of the General Conditions and Supplementary Conditions, less in each case the aggregate of payments previously made, and less such amounts which may be lawfully deducted. At such time as the Project is deemed by OWNER to be ninety percent (90%) complete, OWNER shall, in accordance with the payment terms set forth in the Contract Documents, pay to CONTRACTOR an amount equal to fifty percent (50%) of the full amount of retainage withheld by OWNER to date, and thereafter the amount to be withheld from each payment (other than the final payment) due hereunder shall be five percent (5%), rather than ten percent (10%). At the time of final payment, OWNER shall pay to CONTRACTOR the full amount of the retainage withheld by OWNER to date, less an amount equal to two percent (2%) of the Contract price. OWNER shall release the full amount of any retainage held by the OWNER at the later of the expiration of the correction period or any correction period extension as described in Section 13.12 of the General and Supplementary Conditions.
- 5.3 Payment After Substantial Completion: Once the project is deemed substantially complete in accordance with paragraph 14.8 of the General Conditions, OWNER will

pay as its next progress payment to CONTRACTOR an amount sufficient to increase total payments to CONTRACTOR to 100% of the final Contract price, less two percent (2%) of such Contract price to be held as a retainage through the correction period as described in paragraph 5.2; less a retained amount which shall equal two times the dollar value of any work remaining to be completed, as determined by ENGINEER and agreed to by OWNER; less retained amounts necessary to satisfy any claims, liens or judgments against the CONTRACTOR which have not been suitably discharged; less amounts previously paid the CONTRACTOR; and less any other sums which may be lawfully deducted, the net retained amount being termed the "Final Payment", all in accordance with paragraph 14.8.1 of the Supplementary Conditions.

- 5.4 Release of Final Payment: OWNER will release retained monies due the CONTRACTOR, except for the retainage to be held by OWNER during the correction period pursuant to paragraph 5.2, within 45 days after the date when the requirements for and conditions associated with the release of such amounts have been met, as provided in paragraphs 14.12 and 14.13 of the General and Supplementary Conditions.
- 5.5 Withholding of Payments: OWNER may withhold any payment which ENGINEER refuses to recommend as a result of one or more citations made by ENGINEER under paragraph 14.7 of the General Conditions and paragraph 14.7 of the Supplementary Conditions, or because claims have been made against OWNER or Liens have been filed in connection with the Work. OWNER may continue to withhold such payment until said citations have been removed or remedied to ENGINEER's satisfaction or until the claims have been settled and liens discharged to OWNER's satisfaction.

ARTICLE 6 - (NOT USED)

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In executing this Agreement, CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 8) and the other related data identified in the Bidding Documents including "technical data".
- 7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 7.3 CONTRACTOR is familiar with and is satisfied as to all applicable federal, state and Nation Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- 7.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface

conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto: CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

- 7.5 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.
- 7.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 7.7 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

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

Sullivan Hollow Water Treatment Project

8.1 Project Manual

8.1.1 This Agreement (pages AG-1 to AG-10, inclusive).

8.1.2 Exhibits to this Agreement as follows:

- a. Exhibit "A"; Performance and Other Bonds (pages A-1 to A-4, inclusive).
- b. Exhibit "B"; Certificates of Insurance.
- c. Exhibit "C"; Notice of Award, Notice to Proceed.

8.1.3 CONTRACTOR's Bid Proposal (Attachment 1).

8.1.4 General Conditions, consisting of the Standard General Conditions of the Construction Contract, pages 1 to 42, inclusive.

8.1.5 Supplementary Conditions, as follows:

- a. Supplementary Conditions, pages SC-1 to SC-26, inclusive.

8.1.6 Specifications consisting of separate Sections individually identified by number, title and numbered pages, as listed in the Table of Contents thereof.

8.2 Contract Drawings, as Identified on the Cover Drawing titled: Cattaraugus Administrative Campus Watermain Project

8.3 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

9.2 Except as otherwise provided under this paragraph 9.2, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in

Sullivan Hollow Water Treatment Project

any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. Notwithstanding the foregoing, OWNER may, without consent of CONTRACTOR, assign this Agreement to the Nation, or any other instrumentality or department of the Nation, upon written notice to the CONTRACTOR, if the assignee assumes OWNER's rights and obligations under the Contract Documents. CONTRACTOR shall execute all consents reasonably required to facilitate such assignment.

- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER or CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

SIGNATURES AND ACKNOWLEDGMENTS

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

This Agreement will be effective on _____, 20__.

OWNER

CONTRACTOR

By: _____

By: _____

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

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

License No. _____

Agent for process:

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)

SIGNATURES AND ACKNOWLEDGMENTS

(ACKNOWLEDGMENT OF CONTRACTOR, IF A CORPORATION)

STATE OF _____)
)ss:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came and appeared _____ to me known, who, being by me duly sworn, did depose and say that he resides at _____ that he is the _____ of _____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the impressions affixed to said instrument is an impression of such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

(SEAL)

* * * * *

(ACKNOWLEDGMENT OF CONTRACTOR, IF A PARTNERSHIP)

STATE OF _____)
)ss:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came and appeared _____ to me known and known to me to be one of the members of the firm of _____ described in and who executed the foregoing instrument and he acknowledged to me that he executed the same as and for the act and deed of said firm.

(SEAL)

SIGNATURES AND ACKNOWLEDGMENTS

(ACKNOWLEDGMENT OF CONTRACTOR, IF AN INDIVIDUAL)

STATE OF _____)
) ss:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____ who resides in _____, to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

(SEAL) _____
Notary Public

* * * * *

(ACKNOWLEDGMENT OF OFFICER OF OWNER)

STATE OF _____)
) ss:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came and appeared _____ to me known, who, being duly sworn, did depose and say that he is the _____ of the _____ described in, and which executed the foregoing instrument, that he knows the seal of said OWNER; that one of the impressions appearing on said instrument is a true and correct impression of such seal; and that he affixed it thereto and attested the same over his signature by virtue of authority in him vested.

(SEAL) _____
Notary Public

EXHIBIT A

PERFORMANCE AND OTHER BONDS

1. Commentary to Accompany Construction Bonds (one page)
2. Construction Performance Bond (Pages A-1 and A-2)
3. Construction Payment Bond (Pages A-3 and A-4)
4. Power of Attorney (to be attached by Surety)

Commentary to Accompany Construction Bonds

A. GENERAL INFORMATION

There are two types of construction bonds that are required by statutes for public work in many jurisdictions and are widely used for other projects as well.

- Construction Performance Bond Construction Payment Bond

The Construction Performance Bond is an instrument that is used to assure the availability of funds to complete the construction.

The Construction Payment Bond is an instrument that is used to assure the availability of sufficient funds to pay for labor, materials and equipment used in the construction. For public work the Construction Payment Bond provides rights of recovery for workers and suppliers similar to their rights under the mechanics lien laws applying to private work.

The objective underlying the rewriting of construction bond forms was to make them more understandable and to provide guidance to users. The intention was to define the rights and responsibilities of the parties, without changing the traditional rights and responsibilities that have been decided by the courts. The new bond forms provide helpful guidance regarding time periods for various notices and actions and clarify the extent of available remedies.

The concept of a pre-default meeting has been incorporated into the Construction Performance Bond. All of the participants favored early and informal resolution of the problems that may precipitate a default, but some Surety companies were reluctant to participate in pre-default meetings absent specific authorization in the bond form.

The responsibilities of the Owner and the options available to the Surety when a default occurs are set forth in the Construction Performance Bond. Procedures for making a claim under the Construction Payment Bond are set forth in the form.

EJCDC recommends the use of two separate bonds rather than a combined form. Normally the amount of each bond is 100 percent of the contract amount. The bonds have different purposes and are separate and distinct obligations of the Surety. The Surety Association reports that the usual practice is to charge a single premium for both bonds, and there is no reduction in premium for using a combined form or for issuing one bond without the other.

B. COMPLETING THE FORMS

Bonds have important legal consequences; consultation with an attorney and a bond specialist is encouraged with respect to federal, state, and local laws applicable to bonds and with respect to completing or modifying the bond forms.

Both bond forms have a similar format and the information to be filled in is ordinarily the same on both bonds. If modification is necessary, the modifications may be different.

The bond forms are prepared for execution by the Contractor and the Surety. Evidence of authority to bind the Surety is usually provided in the form of a power of attorney designating the agent who is authorized to sign on behalf of the Surety. The power of attorney should be filed with the signed bonds.

Each bond must be executed separately since they cover separate and distinct obligations.

Preferably the bond date should be the same date as the contract, but in no case should the bond date precede the date of contract.

To accompany the Construction Performance Bond (EJCDC No. 1910-28A) and the Construction Payment Bond (EJCDC No. 1910-2B)

Construction Performance Bond

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

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____
Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____
Name and Title:

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____
Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____
Name and Title:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
 - 3.1. The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2. The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1. Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or
 - 4.2. Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
 - 4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
 - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - 6.1. The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 6.2. Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3. Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1. Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 12.2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3. Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
 - 12.4. Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

Construction Payment Bond

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

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company:

(Corp. Seal)

Signature: _____
Name and Title:

SURETY

Company:

(Corp. Seal)

Signature: _____
Name and Title:

CONTRACTOR AS PRINCIPAL

Company:

(Corp. Seal)

Signature: _____
Name and Title:

SURETY

Company:

(Corp. Seal)

Signature: _____
Name and Title:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2. Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1. Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2. Claimants who do not have a direct contract with the Contractor:

1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1. Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2. Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract

and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINITIONS

15.1. Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3. Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

EXHIBIT B

CERTIFICATE OF INSURANCE

Sullivan Hollow Water Treatment Project

ATTACH CERTIFICATES OF INSURANCE
TO THIS PAGE

EXHIBIT C

SAMPLE NOTICE OF INTENT TO AWARD

SAMPLE NOTICE TO PROCEED

Joel A. Merrill, P.E.
Lionel R. John Health Center
987 R.C. Hoag Dr.
Salamanca, New York 14779

Telephone (716) 945-5894 x5277

Email: joel.merrill@senecahealth.org

NOTICE OF INTENT TO AWARD

Date: _____ Re: Owner's Contract No.: _____
Contract For: Sullivan Hollow Water
Treatment Plant Upgrades Project
To: _____
Address: _____

Gentlemen:

You are notified that your Bid dated _____, 20__, for the above Contract has been considered. You are the apparent successful Bidder and are being considered for award of a contract for _____

The Contract Price of your contract is _____ Dollars (\$ _____).

Four (4) copies (1 for OWNER; 1 for OWNER's Counsel; 1 for CONTRACTOR; 1 for ENGINEER) each of the conformed Project Manual, which together with the Drawings constitutes the proposed Contract Documents, will be delivered to you. Copies of the Drawings will be delivered separately or otherwise made available to you promptly, as provided in the Instructions to Bidders.

You must comply with the following conditions precedent within fifteen days of the date of receiving the Project Manual:

1. You must execute and deliver to the Owner all copies of the executed counterparts of the Agreement.
2. You must deliver the executed Contract Security (Bonds) as specified in the General Conditions (paragraph 5.1) and Supplementary Conditions (paragraph SC-5.1). The Bond forms are included at the end of the Agreement under Exhibit A.
3. You must deliver with the executed Agreement the required Certificates of Insurance, which are to be attached to Exhibit B. Insurance requirements are specified in Article 5 of the General Conditions and Article 5 of the Supplementary Conditions.

Failure to comply with these conditions within the time specified will entitle Owner to consider your bid abandoned, to annul this Notice of Intent to Award and to declare your Bid Security forfeited.

Within ten days after you comply with the above conditions, the Owner intends to return to you one of the executed Project Manuals, which will include the fully signed counterpart of the Agreement and such other attachments as may be required from the Owner.

OWNER: _____

By: _____
(Authorized Signature)

Joel A. Merrill, P.E.
Lionel R. John Health Center
987 R.C. Hoag Dr.
Salamanca, New York 14779

Telephone (716) 945-5894 x5277

Email: joel.merrill@senecahealth.org

NOTICE TO PROCEED, SUSPEND, OR RESUME WORK ORDER

Date issued: _____ Re: Owner's Contract No.: _____
Contract For: : Sullivan Hollow Water
To: _____ Treatment Plant Upgrades Project
Address: _____

THIS IS YOUR NOTICE TO PROCEED, SUSPEND, OR RESUME WORK ON THE CONTRACT AS NOTED

_____ NOTICE TO PROCEED

THIS IS YOUR NOTICE TO PROCEED WITH THE WORK ON THE ABOVE CONTRACT FOR THE FOLLOWING ITEMS: _____

THE TIME OF THE CONTRACT WILL START AT THE BEGINNING OF BUSINESS ON _____

SUSPENSION OF WORK

YOUR ARE TO SUSPEND WORK FOR THE FOLLOWING REASONS: _____

EFFECTIVE CLOSE OF BUSINESS _____ ITEM NUMBERS _____

TYPE OF SUSPENSION: _____ TOTAL _____ PARTIAL
_____ NO CHARGE WILL BE MADE AGAINST CONTRACT TIME FOR PERIOD OF SUSPENSION
_____ FULL COUNT OF CONTRACT TIME WILL CONTINUE
_____ AN EQUITABLE ADJUSTMENT OF CONTRACT TIME WILL BE MADE FOR THE PERIOD
OF THE PARTIAL SUSPENSION UPON RESUMPTION OF WORK.

DO NOT RESUME WORK UNTIL YOU ARE NOTIFIED TO DO SO IN WRITING

_____ RESUMPTION OF WORK

ITEM NUMBERS __ . EFFECTIVE BEGINNING OF BUSINESS _____ .

TIME CHARGED DURING PERIOD OF PARTIAL SUSPENSION _____ CALENDAR DAYS

SIGNATURE: _____ TITLE: _____ DATE: _____

PLEASE ACKNOWLEDGE RECEIPT BY RETURNING SIGNED COPY

SIGNATURE: _____ TITLE: _____ DATE: _____

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

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

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

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

1.02 Terminology

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

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Initial Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

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

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

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

3.02 *Reference Standards*

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

3.03 *Reporting and Resolving Discrepancies*

- A. *Reporting Discrepancies:*
 - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

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

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

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

3.05 *Reuse of Documents*

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

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

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

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

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

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

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

5.01 *Availability of Lands*

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

5.02 *Use of Site and Other Areas*

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

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

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

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

5.03 *Subsurface and Physical Conditions*

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

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

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

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

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

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

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 2. claims for damages insured by reasonably available personal injury liability coverage.
 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
 - 1. include at least the specific coverages provided in this Article.
 - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 - 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

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

6.05 *Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
 - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

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

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *Labor; Working Hours*

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

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and

guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

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

7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 *Substitutes*

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
 - C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
 - D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
 - E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
 - F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

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

- O. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

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

7.08 *Permits*

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

7.09 *Taxes*

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

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

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

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
 - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
 - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
 - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
 - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
 - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

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

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

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

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

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

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
 5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
 6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
 7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

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

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

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

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

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

8.03 *Legal Relationships*

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

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

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

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

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

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

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

10.04 *Rejecting Defective Work*

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

10.05 *Shop Drawings, Change Orders and Payments*

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

10.06 *Determinations for Unit Price Work*

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

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

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

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

10.09 *Compliance with Safety Program*

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

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

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

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

11.02 *Owner-Authorized Changes in the Work*

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

11.03 *Unauthorized Changes in the Work*

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

11.04 *Change of Contract Price*

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

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

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

11.06 *Change Proposals*

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

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

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

11.07 Execution of Change Orders

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

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

11.08 *Notification to Surety*

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

ARTICLE 12 – CLAIMS

12.01 *Claims*

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

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

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

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

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

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

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

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

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

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

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

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

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

13.03 *Unit Price Work*

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

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

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

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

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

14.03 *Defective Work*

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

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

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

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

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

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

15.01 Progress Payments

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

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

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

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount

remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

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

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

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

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

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

15.05 *Final Inspection*

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

15.06 *Final Payment*

- A. *Application for Payment:*
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

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

15.08 *Correction Period*

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

- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

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

and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

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

16.03 *Owner May Terminate For Convenience*

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

16.04 *Contractor May Stop Work or Terminate*

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

expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

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

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

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

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Headings*

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

Supplementary Conditions

SUPPLEMENTARY CONDITIONS

INTRODUCTORY STATEMENT

Supplementary Conditions: These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8, 1990 Ed.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in force and effect.

NOTES TO READER

1. Insofar as format and arrangement of the material is concerned, these Supplementary Conditions follow the concepts of the "Guide to the Preparation of Supplementary Conditions," (Document EJCDC No. 1910-17, 1990 Ed.) prepared by the Engineer's Joint Contract Documents Committee.
2. Supplementary Conditions are arranged in the same order as the paragraphs in the General Conditions, and the paragraphs herein bear comparable numbers to those of the General Conditions, but with the prefix "SC." For brevity, paragraph numbers of the General Conditions when appropriate, are referred to herein with the prefix "GC."
3. The terms used in the Supplementary Conditions which are defined in the General Conditions of the construction contract (No. 1910-8, 1990 Ed.) have the same meanings assigned to them in the General Conditions.
4. Administrative procedures which accompany certain subjects covered under the General Conditions and Supplementary Conditions appear in Division 1 of the Specifications. This would apply, for example, to Change Orders and Shop Drawing Submittals.

ARTICLE 1-DEFINITIONS

- A. Modify the existing definitions as follows:

SC-1.3 Application for payment: Replace the phrase "accepted by the ENGINEER" in paragraph 1.3 of the General Conditions with the phrase "provided by the ENGINEER.)

- B. Supplement existing definitions as follows:

SC-1.35 Add the following in the end of General Condition 1.35:

"Shop Drawings include the following:

1. Preprinted material such as illustrations, standard schedules, performance charts, instructions, brochures, diagrams, manufacturer's descriptive literature, catalog data and other data to illustrate a portion of the Work, but not prepared exclusively for this Contract.

2. Drawings, schedules, diagrams and other data prepared specifically for this Contract, by the Contractor or through the Contractor by way of a subcontractor, manufacturer, supplier, distributor or other lower tier contractor, to illustrate a portion of the Work.”

SC-1.37 Subcontractor: Delete the phrase, ”at the site” from the entire paragraph.

C. Add the following definitions:

SC-1.46 Bid Item Description – A separate description of each Bid item

SC-1.47 Work terminology: the following definitions are intended to supplement paragraph 1.43 of the General Conditions:

1. Furnish or Supply: To supply, deliver, and unload materials and equipment at the project site and inspect for damage.
2. Install: To unpack, place, assemble, erect, apply, finish, cure, protect, and clean furnished materials and equipment in secured position ready for the intended use.
3. Provide: To furnish or supply, and install.
4. Products: New material, machinery or components, equipment, fixtures, and systems forming the Work. It does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work. Products may also include existing materials or components, if specifically identified for reuse in the Contract Documents.

SC-1.48 Site: The lands upon which work is to be performed. The limits of such lands may be indicated elsewhere in the Contract Documents.

SC-1.49 “As-Shown”: Whenever, in the description of any part of the Work, the expression AS SHOWN, SHOWN ON THE PLANS, or similar expressions are used, it shall be understood in to mean as shown on the Contract Drawings, unless another meaning is plainly indicated.

SC-1.50 Nation – The Seneca Nation of Indians, a federally recognized Indian Tribe.

SC-1.51 THPO – The Seneca Nation of Indians Tribal Historic Preservation Officer

Policies and Procedures, attached hereto as Exhibit GC-A.

SC-1.52 TERO – The Seneca Nation of Indians Tribal Employment Rights Ordinance, attached hereto as Exhibit GC-B.

ARTICLE 3 - PRELIMINARY MATTERS

Copies of Documents

SC-2.2 Delete paragraph 2.2 of the general Conditions in its entirety and insert the following in its place: “OWNER will furnish copies of the Contract Documents to CONTRACTOR as follows:

Three sets each of full-size drawings and project manual with attachments.

Additional copies of Contract Documents or a copy of reproducible documents may be purchased at ENGINEER’S normal rates for reproduction.

The copies of Contract Documents furnished to CONTRACTOR after signing of Agreement will be revise by ENGINEER to incorporate the requirements of any issued Addenda throughout the drawings and the project manual, rather than issuing copies of the Addenda as separate instructions. The incorporation of Addenda will be done solely to improve efficiency of the construction process and will have no effect on the requirements of the Contract. In the event of a disagreement between the documents distributed after signing of the Agreement (which have the Addenda incorporated throughout the documents) and the documents forming the original signed Agreement (which will be identical to those distributed during bidding), the documents forming the original signed Agreement shall take precedence. Refer to Supplementary Condition 2.5 regarding Contractor’s responsibility to verify that the addenda have been accurately incorporated in the documents prior to using those documents.’

Commencement of Contract Time; Notice to Proceed

SC-2.3 Amend the last sentence of paragraph 2.3 of the general Conditions by striking the phrase “later than the sixtieth day” and adding the phrase “later than the seventy-fifth day”; and as so amended, paragraph 2.3 remains in effect.

Before Starting Construction

SC-2.5 Add the following sentence at the end of the paragraph: “CONTRACTOR’s study and checking of the Contract Documents shall include his/her independent verification that the addenda have been accurately and completely incorporated into the Contract Documents prior to relying on those documents. Accordingly, Contractor assumes the full risk of working from addenda-incorporated documents.”

SC-2.61 Delete paragraph 2.6.1 of the General Conditions in its entirety and insert the following

In its place:

“a preliminary progress schedule indicating the times (dates) for starting and completing the various stages of the Work. Schedule shall include and Milestones specified in the Contract Documents, shall consider timer required for submission and approval of the shop drawings and sample submittals and for manufacturing lead times and product delivery dates, and shall contain at least the level of detail and other characteristics as identified in the Contract Documents.”

SC-2.6.2 Add the following to the end of paragraph 2.6.2 of the General Conditions:

“Schedule shall allow a minimum of ten working days for ENGINEER’s review after receipt of each submittal and resubmittal (excluding time for transmittal). In preparing schedule, CONTRACTOR shall discuss individual submittal requirements with the ENGINEER and shall increase the minimum time allowance for review of complex or voluminous submittals.”

SC-2.7 Amend the first sentence of paragraph 2.7 of the General Conditions by striking out the following words “Before any work at the site is started . . .,” and adding the words “Before the Effective Date of the Agreement,” and as so amended, paragraph 2.7 remains in effect.

Preconstruction Conference

SC-2.8 Amend the first sentence of paragraph 2.8 of the General Conditions by striking out the following words “attended by CONTRACTOR, ENGINEER and others as appropriate,” and adding the following sentence at the end of paragraph 2.8 of the General Conditions: “Present at the conference will be OWNER or his representative, ENGINEER, Resident Project Representative, CONTRACTOR and his Superintendent, and other invited parties or government representatives having jurisdiction over or official interest in the project and others as appropriate.”

Initially Acceptable Schedules

SC-2.9 Change the fourth sentence to read:

“The progress schedule will be acceptable to ENGINEER if it contains at least the specified level of work detail and characteristics and provides for an orderly progression of the Work to completion within any specified milestones and Contract times. Such acceptances will not impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work not interfere with or relieve CONTRACTOR from CONTRACTOR’s full responsibility therefor.”

ARTICLE 3-CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

SC-3.3.1 Insert the word “applicable” in front of the term “Laws and Regulations” as the same appears in paragraph 3.3.1.

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

4.2 Subsurface and Physical Conditions

SC-4.2 No reports or drawings were utilized by ENGINEER in preparation of Drawings and Specifications.

4.5 Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material.

Add the following sub-paragraph after SC-4.5.1.

“SC-4.5.1 OWNER is unaware if the existence if any PCBs, petroleum, hazardous waste or radioactive material within the Scope of Work at the site.”

SC 4.5.4 Delete paragraph 4.5.4 of the General Conditions in its entirety.

ARTICLE 5 – BONDS AND INSURANCE

Performance, Payment and other Bonds

SC-5.1 Insert the word “applicable” in front of the term “Laws and Regulations” as the same appears in paragraph 5.1.

Add the following language at the end of paragraph 5.1 of the General Conditions:

“CONTRACTOR and surety shall jointly complete and execute the Performance and Payment Bond forms included at the end of the Agreement.”

CONTRACTOR’s Liability Insurance

SC-5.4 The limits of the liability for the insurance required by paragraph 5.4 of the General Conditions shall provide for coverages for not less than the following amounts or greater where required by applicable Laws and Regulations:

5.4.1 and 5.4.2 Worker’s Compensation, etc., under paragraphs 5.4.1 and 5.4.2 of the General Conditions, in accordance with the statutory requirements of the jurisdiction in which the services are to be performed; and Employer’s Liability Insurance with limits not less than \$1,000,000 each accident or death of an employee engaged in the Work hereunder.

5.4.3, 5.4.4 and 5.4.5 CONTRACTOR’s Liability Insurance under paragraphs 5.4.3 through 5.4.5 of the General Conditions which shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of the CONTRACTOR:

(1)	General Aggregate (except Products-Completed Operations):	\$1,000,000
(2)	Products-Completed Operations Aggregate:	\$1,000,000
(3)	Personal and Advertising Injury (Per Person/Organization)	\$1,000,000
(4)	Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
(5)	Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where applicable	
(6)	Excess Liability:	
	General Aggregate	\$1,000,000
	Each Occurrence	\$1,000,000

5.4.6 Including:

Automobile Liability:

(1)	Bodily Injury:	\$500,000 per person; \$1,000,000 Each Accident
	Property Damage	\$1,000,000 Each Accident
		OR
(2)	Combined Single Limit (Bodily Injury & Property Damage):	
		\$1,000,000

SC-5.4.7 OWNER, ENGINEER shall be listed as additional insureds. The policies shall be endorsed to provide that the coverage to the additional insureds is primary and non-contributory.

SC-5.4.10 The Contractual Liability coverage required by paragraph 5.5.10 of the General Conditions shall provide coverage for not less than the following amounts:

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

SC-5.4.11 The provisions or endorsements necessary to comply with paragraphs 5.4.11 of the General Conditions shall include the obligation to notify the OWNER and ENGINEER when an aggregate limit of liability required or certified has been reduced by the payment of claim(s). ENGINEER shall also be notified 30 days in advance of any cancellation in coverage.

5.6 Property Insurance

Delete the first sentence of paragraph 5.6 of the General Conditions and replace with the following:

“OWNER shall purchase and maintain or cause to be purchased and maintained property insurance upon the Work and the Property to the full insurable value thereof from a company or companies authorized to do business in the jurisdiction in which the Property is located.

SC-5.7 Insert the word “applicable” in front of the terms ‘Laws and Regulations’ as the same appears in paragraph 5.7.

SC-5.11.2 Delete paragraph 5.11.2 of the General Conditions in its entirety.

ARTICLE 6-CONTRACTOR’S RESPONSIBILITIES

6.3 Payment of Minimum Wage Rates

Add the following subparagraph to paragraph 6.3 of the General Conditions:

‘SC-6.3.1 The CONTRACTOR and every subcontractor shall pay employees no less than the wage rates published for each trade or occupation listed in the Davis-Bacon Prevailing Wage Rate Schedule, available at <http://www.wdol.gov/Index.aspx> as the same may be supplemented, changed or amended. In no case shall CONTRACTOR be entitled to any additional compensation or extras because of any supplement, change, redetermination or amendment of the Davis-Bacon Prevailing Wage Rate Schedule.

Progress Schedule

SC-6.6.1 Delete paragraph 6.6.1 of the General Conditions in its entirety and insert the following in its place:

“CONTRACTOR shall submit to ENGINEER for acceptance proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments shall conform generally to the progress schedule then in effect and additionally shall comply with any provisions of the General Requirements applicable thereto. ENGINEER’s acceptance will not impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR’s full responsibility therefor. ENGINEER’s review to determine acceptability will be limited to future activities only. By accepting the revised schedule, ENGINEER does not indicate acceptance of any historic information shown thereon.”

6.7 Substitutes and “Or Equal” Items.

SC-6.7.1.2 Substitute Items: Add the following language at the end of paragraph 6.7.1.2 of the General Conditions:

“If the substitute item requires no modifications to the structures, piping, layouts, etc., detailed on the drawings, the application shall also include details of proposed modifications necessary to accommodate the substituted item. Such details shall include scaled layouts, dimensions and other pertinent information to enable the ENGINEER to accurately assess the entire application. If the substitute item and proposed modifications are approved, the CONTRACTOR, at no additional cost to the OWNER, shall do all work necessary to make such modifications and absorb all costs of any related changes imposed on other CONTRACTORS. Final details of such modifications shall be prepared and submitted by the CONTRACTOR for approval under the Shop Drawing requirements specified elsewhere.”

SC-6.7.1.3 CONTRACTOR’s Expense: Add the following language at the end if subparagraph 6.7.1.3 of the General Conditions:

“In order to aid ENGINEER in determining the equality of a proposed “or equal” or substitute item (when compared to the item actually specified), the CONTRACTOR shall arrange for the performance of any tests requested by the ENGINEER. ENGINEER shall determine the nature, extent, tester and degree of supervision of such tests. Certified test results shall be mailed directly to the ENGINEER for all tests requested. All costs of such tests, including engineering costs, shall be borne by the CONTRACTOR.”

6.8 Concerning Subcontractors, Suppliers and Others:

SC-6.8.1 Add the following language to the end of paragraph 6.8.1 of the General Conditions:

“Rejection by OWNER or ENGINEER of a proposed supplier or manufacturer of a particular item of material or equipment other than the suppliers(s) or manufacturer(s) named in the Specification for the item does not constitute grounds for “reasonable objection” by CONTRACTOR or for any adjustment in his Contract Price or time of completion; such proposal constitutes a substitution and must be processed in accordance with the procedures and requirements of Paragraph(s) 6.7 of the General Conditions and Supplementary Conditions.”

SC-6.8.2 Add the following language to the end of paragraph 6.8.2 of the General Conditions:

“However, no increase in Contract Price will be allowed to cover a substitute if acceptance is revoked by ENGINEER or OWNER:

- a. Of a supplier, person or organization who cannot meet the specifications covering the item of material or equipment which he is to furnish, or

- b. Of a subcontractor identified on CONTRACTOR’s list who cannot perform the work designated by such listing for legal reasons including but not limited to the fact the subcontractor is unlicensed to perform that particular aspect of work or is blacklisted because of labor violations.”

SC-6.9.1 Insert the word “applicable” in front of the term “Laws and Regulations” as the same appears in paragraph 6.9.1.

6.13 Permits

SC-6.13 Add the following sentence to paragraph 6.13 of the General Conditions

“When construction permits are accompanied by regulations or requirements issued by a particular authority or agency, it shall be the CONTRACTOR’s responsibility to familiarize himself and comply with such regulations or requirements as they apply to his operations on the project.”

6.14 Laws and Regulations

SC-6.14.2 Insert the word “applicable” in front of the term “Laws and Regulations” as the same appears in paragraph 6.14.2.

Taxes

Add the following subparagraph to GC-6.15

SC-6.15.1 “The OWNER is exempt from payment of Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials, equipment and supplies to be sold to the OWNER pursuant to this Contract. Also exempt from such taxes are purchases by the CONTRACTOR and his subcontractors of materials, equipment and supplies to be sold to the OWNER pursuant to his Contract, including tangible personal property to be incorporated in any building, structure or other real property forming part of this project.”

Use of Premises

SC-6.16 Insert the word “applicable” in front of the term “Laws and Regulations” as the same appears in paragraph 6.16.

Add SC-6.18.1 as follows:

CONTRACTOR recognizes that OWNER adheres to the Seneca Nation of Indians Tribal Historic Preservation Officer Policies and Procedures (THPO), a copy of which is attached hereto as exhibit GC-A. CONTRACTOR recognizes that the Nation’s THPO will be incorporated in all contracts pertaining to the construction of the Project. CONTRACTOR, including its Subcontractors and Suppliers, will be required to comply with the requirements of the THPO, including the strict adherence to THPO protocol in the event of a discovery human remains and associated funerary objects.

6.19 Record Documents

SC-6.19 Delete the last sentence of General Conditions 6.19 and replace with the following:

“Prior to CONTRACTOR notifying ENGINEER that the entire work is substantially complete, CONTRACTOR shall deliver to ENGINEER for OWNER one copy of current record documents and required operation and maintenance data relating to the portion of the project being utilized. CONTRACTOR shall submit said documents prior to OWNER accepting the portion of the project to be used as substantially complete.”

6.20 Safety and Protection

SC-6.20 Add the following language to the end of General Condition GC-6.20:

“Site Safety Responsibilities and Roles.

It is the objective of the OWNER that the CONTRACTOR maintain all construction worksites in a safe, neat and orderly condition, and free from human hazard. It is the policy of the OWNER that if an unsafe condition is encountered, the affected activity shall be suspended until the unsafe condition is corrected.

As clearly stated in the Contract Documents, the CONTRACTOR has the sole responsibility for ensuring that the construction worksite is safe, neat and maintained in an orderly condition, and is free from human hazard. The CONTRACTOR is also solely responsible by law for compliance, and regulatory reporting requirements, for all workplace and employee safety issues.

The CONTRACTOR’s designated On Site Safety Representative will be the sole point-of-contact for all safety issues and shall have the authority to stop the work and implement corrective procedures.

The CONTRACTOR is required to have a Project Safety Plan. The Project Safety Plan shall outline the CONTRACTOR’s actions that will ensure that the project site is maintained in a safe, neat and orderly condition, and is free from human hazard. The Project Safety plan shall also contain written procedures for the CONTRACTOR’s compliance with government safety laws and associated reporting requirements.

At a minimum, the Project Safety Plan should include the following:

- Project Safety Objective Statement
- Safety Responsibilities and Roles within Contractor’s Organization
- The Contractor Safety Policy Requirements for Subcontractors
- Mandatory Guidelines for the use of Personal Protective Equipment
- Emergency Response Procedures including routes to nearest hospitals
- Procedures for reporting accidents
- Site security procedures
- Procedures for Government Agency Compliance Reporting
- Procedures for the Protection of the general public
- Procedures for the protection of project site visitors
- Safety procedures related to the maintenance and protection of traffic
- Hazard communication program
- Confined space program
- Lockout and ground fault protection procedures
- Identification of the proposed Site Safety Representative and Competent Person, including credentials.
- Hazard analysis for all major work items
- Rigging and crane safety procedures
- Statement acknowledging that the Contractor is solely responsible for construction worksite safety issues.

Emergencies

SC-6.23 Add the following language at the end of paragraph 6.23 of the General Conditions

“CONTRACTOR shall designate one person to respond to emergencies and act on the CONTRACTOR’s behalf during off-work hours at the project site. The person’s name, address, 24 hour telephone number, shall be provided to the POWNER during the preconstruction conference and the designated person shall be on call during off-work hours. Response time shall not exceed one hour after notification is given by OWNER or ENGINEER that an emergency exists at the project site.”

Submittal Procedures:

Paragraph 6.25.2 of the General Conditions is deleted and replaced with the following:

SC-6.25.2 Each submittal shall be stamped with the following certification statement, signed and dated by the Contractor’s designated representative:

“Certification Statement: By this submittal, I hereby represent that I have determined and verified all field measurements, field construction criteria, materials, dimensions, catalog numbers and similar data and I have checked and coordinated each item with other applicable approved shop drawings and all contract requirements.’

Shop Drawing Review:

Add the following subparagraph to GC-6.26:

SC-6.26.1 The terms appearing on ENGINEER’s Shop Drawing Review Stamp denote results of ENGINEER’s review of CONTRACTOR’s submitted data have the following meanings, including procedures for disposition of the various copies of such data:

- a. “Approved” if no change or rejection is made.
- b. “Approved as Noted” if minor changes or additions are made, but resubmittal is not considered necessary.
- c. “Revise and Resubmit” if changes requested are extensive. In this case, resubmittal after correction is necessary and the same number of copies shall be included in the resubmittal as the first submittal.
- d. “Rejected” if it is considered that the data submitted cannot with reasonable revision meet the requirements of the Plans and Specifications.
- e. “Submit Specified Item” if the data submitted is not clear, complete, or for other reasons cannot be examined by the ENGINEER to establish compliance with the Plans and Specifications.

Add the following language to paragraph 6.28 of General Conditions:

If such related Work is unacceptable to ENGINEER, or is incompatible with or does not conform to the requirements of the subsequently reviewed Shop Drawings, CONTRACTOR shall correct or replace such Work at his own expense as well as the Work of other contractors whose work is affected in any way.

CONTRACTOR’S General Warranty and Guarantee

Add SC-6.30.3 as follows:

“CONTRACTOR acknowledges the sovereignty of the Seneca Nation of Indians (the “Nation”) separate and apart from the United States and state and local governments. CONTRACTOR shall not communicate in any way, directly or indirectly, with any federal, state or local government or other instrumentality relating to any matter related to the Contract Documents or the Work, except to the extent it has received the prior written authorization of the OWNER. This prohibition is intended to and shall extend to all those acting through or under CONTRACTOR, including but not limited to any Subcontractors or Suppliers. Notwithstanding any other provision of this Agreement, any failure to comply with this Section 6.30.3 shall constitute a default of this Agreement by CONTRACTOR and OWNER shall have the right to terminate this Agreement under paragraph 15.2 and pursue any and all other rights available at law or in equity.”

Indemnification

SC-6.31 Insert the word “applicable” in front of the term “Laws and Regulations” as the same appear in the first sentence of paragraph 6.31.

ARTICLE 7 – OTHER WORK

Related Work at Site:

SC-7.1 Add the following subparagraph to 7.1 of the General Condition:

“SC-7.1.1 OWNER does not anticipate letting other direct contracts for the project.

SC-7.1.2 OWNER does not anticipating performing any work on the project with his
Own forces.”

Coordination:

SC-7.4 Add the following language to General Condition 7.4:

“OWNER does not anticipate letting other direct contracts for the project.”

Article 9 – ENGINEER’S STATUS DURING CONSTRUCTION

Decisions on Disputes:

Amend paragraph 9.11 of the General Conditions as follows:

Change the phrase in brackets, which appears in the thirteenth line to read: “(but in no event later than ten days).”

Change the sixteenth line to read: “within forty-five days after the start of such occurrence or event.”

Strike the sentence beginning with “ENGINEER’S written decision on such claim, dispute or other matter will be final....” And replace with the following language:

“ENGINEER’S written decision on such claim, dispute or other matter will be final and binding upon OWNER and CONTRACTOR but subject to mediation as provided in Article 16. Either party may file for mediation of the ENGINEER’S written decision is issued. Either party may, within 30 days from the date of an ENGINEER’S decision is issued, demand in writing that the other party file for mediation within 60 days of he ENGINEER’S decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate with respect to the ENGINEER’S decision.”

SC-9.12 Insert the word “applicable” in front of the term ‘Laws and Regulations’ as the same appears in the last sentence of 9.12.

ARTICLE 10 – CHANGES IN THE WORK

No changes to the General Conditions

ARTICLE 11 – CHANGE OF CONTRACT PRICE

SC-11.2 Notice of Claim and Supporting Data

Amend paragraph 11.2 of the General Conditions, as follows:

Change the phrase in brackets, which begins on the fifth line, to read: “(but in no event later than ten days).”

Change the first part of the third sentence, which begins on the seventh line, to read: “Notice of the amount of the claim with supporting data shall be delivered within forty-five days after the start of the occurrence...etc.”

SC-11.3 through SC-11.7 Cost of Work and CONTRACTOR’S Fee

Delete all paragraphs 11.3 through 11.7 of the General Conditions and substitute in their place the following:

11.3 The value of any work covered by a Change Order or any claim for an increase or decrease in the Contract Price shall be determined by one of the following method:

1. By such applicable unit prices, if any, are set forth in the Contract; or
2. If no such unit prices are set forth, then by unit prices or by lump sum mutually agreed

Upon by the OWNER and the CONTRACTOR; such unit or lump sum being arrived at

By estimates of reasonable value prepared in general conformance outline set forth in

Paragraph 3 below or

3. Where there are no applicable unit prices and agreed lump sum prices cannot be readily Established or substantiated, the CONTRACTOR shall be paid the actual and reasonable cost of:
 - a. Necessary materials (including transportation to the site). Material used, if acquired by direct purchase, must be covered by receipted bills or acceptable invoices. All prices on used material incorporated in either temporary or permanent work shall be billed at the fair value, less the original cost when new. A reasonable salvage credit shall be given for all salvageable material recovered. Salvage value of substantial material recovered must be determined jointly by the CONTRACTOR and the ENGINEER'S; plus
 - b. Necessary direct labor charges. Each class of labor shall be billed separately at actual payroll rates. Average rates based on different classes of labor, will not be accepted; plus
 - c. Payments required to be made to labor organizations under existing labor agreements; plus
 - d. Equipment and plant rentals, other than small tools; plus
 - e. Compensation for profit and overhead as prescribed in paragraph 11.4

In calculating the cost of equipment and plant rentals, the base hourly rates shall be the daily rate as listed in the current Rental Rates for Construction Equipment prepared by the Associated Equipment Distributors divided by eight (8); Thereafter

The first 20 hours will be paid at 90% of the above base hourly rate; for 21 to 40 hours, the rate will be 80% of the above base hourly rate; and

For over 40 hours, the rate will be 45% of the above base hourly rate.

The number of hours to be paid for shall be the number of hours that the equipment or plant is actually used in performing the work of the Change Order.

Equipment to be used by the CONTRACTOR shall be specifically described and be of suitable size and suitable capacity required for the work to be performed. In the event the

CONTRACTOR elects to use equipment of a higher rental value than that suitable for the work, payment will be made at the rate applicable to the suitable equipment. The equipment actually used and the suitable equipment paid for will be recorded as part of the record for the work performed. The ENGINEER will determine the suitability of the equipment. If there is a differential in the rate of pay of the operator of oversized or higher rate equipment, the rate paid for the operator of the oversized or higher rate equipment, the rate paid for the operator will likewise be that of the suitable equipment.

In the event that a rate is not established in the Associated Equipment Distributors Rental Rates for a particular piece of equipment or plant, the OWNER shall establish a rate for that piece of equipment or plant that is consistent with its cost and use.

It is mutually understood that the base daily rate include all costs incidental to the equipment and plant rentals including cost of moving to and from site.

11.4 If methods 2 or 3 are used, the CONTRACTOR may add twenty % (20%) to the total

Cost of material, equipment, plant rentals and direct labor, as his only compensation for profit and overhead, except that the 20% shall not be applied to the premium portion of overtime pay.

If any of the work is performed by a subcontractor, the CONTRACTOR shall be paid the actual and reasonable cost of such subcontracted work computed as outlined above or on such other basis as might be approved by the OWNER, plus an additional allowance of five% (5%) to materials and direct labor to cover the CONTRACTOR'S profit, superintendence, administration, insurance, and other overhead. The cost of the premium portion of overtime pay shall be excluded when computing the above described charges for profit and overhead.

11.5 Overhead may be defined to include the following items:

1. Premium on bond;
2. Premium on insurance required by the State, Workmen's Compensation Insurance, public liability and property damage insurance, unemployment insurance, Federal old age benefits, other payroll taxes and such reasonable charges that are paid by the CONTRACTOR pursuant to written agreement with an employee;
3. All salary and expenses of executive officers, supervising or supervising Employees;
4. All clerical or stenographic employees;
5. All charges for minor equipment, such as hand tools, small hand held power tools, Including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, Wrenches, etc. and other miscellaneous supplies and services including ladders, Scaffolds, safety equipment, reusable forms, administrative or personal vehicles or Equipment; and

6. All drafting room accessories such as paper, tracing cloth, blue printing, etc.

11.6 Regardless of the method of payment (1, 2, or 3), the CONTRACTOR will be required to submit evidence satisfactory to the OWNER to substantiate each and every item that constitutes his proposal of the value of the change.

The OWNER will determine by which of the methods, 1, 2, or 3, the value of the change shall be computed.

The provisions hereof shall not affect the power of the CONTRACTOR to act in case of emergency as provided elsewhere in the General Conditions.

11.7 In computing the value of a Change Order (under methods 2 or 3), which involves additions and deductions of work:

1. If the cost of the added work exceeds the cost of the omitted work, CONTRACTOR'S overhead and profit shall be computed on the amount by which the added work exceeds the omitted work.
2. If the cost of the omitted work exceeds the cost of the added work, the CONTRACTOR will be allowed to retain the overhead and profit on the amount by which the omitted work exceeds the added work.

SC-11.9.2 Unit Price Item Description

Add the following language to paragraph 11.9.2 of the General Conditions

"Each Unit Price Item has a Unit Price Bid Item Description Page which lists the work included under that item and certain other parameters, the details of which appear in the General Requirements if Unit Price work is utilized on the project. Discrepancies or omissions in the Unit Price Item Descriptions shall not be construed as relieving the CONTRACTOR of the responsibility of performing the entire work included in his Contract as shown on the Contract Drawings and described in the Specifications at the bid unit prices, without increases. If it is found that some aspect of the work required under this Contract was not listed in any of the Unit Price Item Descriptions, the ENGINEER shall determine under which of the existing unit price items the work shall be paid."

ARTICLE 12-CHANGE OF CONTRACT TIMES

SC-12.1 Notice of Claim and Supporting Data

Amend paragraph 12.1 of the General Conditions, as follows: Replace the crossed out phrase in the parenthesis, which begins on the fifth line with: "(but in no event later than ten days)."

Change the first part of the third sentence, which begins on the ninth line, to read: "Notice of the extent of the claim with supporting data shall be delivered within forty-five days after such occurrence...etc"

Delete paragraph 12.3 in its entirety and replace with the following:

Where CONTRACTOR is prevented from completing any part of the work within the Contract Times (or Milestones) due to delay beyond the control of the CONTRACTOR or CONTRACTOR'S subcontractors and/or

suppliers, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefore as provided in paragraph 12.1 Delays beyond the control of the Contractor, its Subcontractors and its Suppliers shall include, but may not be limited to, acts or neglect of utility workers or other contractors performing other work not under the supervision of CONTRACTOR as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions that CONTRACTOR could not foresee or defend against or acts of God. Delays attributable to and within the control of a subcontractor or supplier shall be deemed to be delays within the control of the CONTRACTOR.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF

DEFECTIVE WORK

Access to Work

SC-13.2 Add the OWNER’S CONSULTANT as a party who will have access to the work.

Tests and Inspections

SC-13.5 Add the following language to paragraph 13.5 of the General Conditions:

“ Inspectors and testing laboratories shall be acceptable to ENGINEER, and CONTRACTOR shall submit evidence of their qualifications to ENGINEER prior to any inspections or tests, if requested by ENGINEER,”

Correction Period

SC-13.12.2 Add the following phrase to the last sentence of the subparagraph 13.12.2 of the General Conditions:

“or if set forth in the Partial Certificate of Substantial Completion issued under paragraphs SC-14.10.”

SC-13.12.3 Add the following language to subparagraph 13.12.3 of the General Conditions:

A new one year correction period shall commence to run on the date when CONTRACTOR replaces “defective” work with “non-defective” work, but such guarantee shall apply only to the actual components of the work newly installed as a result of the corrective action.

All related components of the work not showing defect shall be exempt from the additional guarantee, except that the original guarantee on a related component shall be extended for a period of time corresponding to the period of non use of such component if it cannot be used or placed in service due to the condition of the original “defective” work, and/or for the time period that such component is taken out of service in order to replace the “defective” work.

ARTICLE 14 – PAYMENT TO CONTRACTOR AND COMPLETION

SC-14.2 Application for Progress Payment

Add the following paragraphs to paragraph 14.2 of the General Conditions:

“Subject to the OWNERS approval, ENGINEER will establish a uniform cut-off date for each month to determine the dollar value of the completed work and the amount of payment to CONTRACTOR covering his operations during the preceding period”

“CONTRACTOR may request payment for delivered materials and equipment if he can demonstrate to OWNER’S satisfaction that such item(s) are those required for incorporation in the work and that the following submittals are valid and in proper order:

1. If the materials or equipment are delivered on or off the site, this application for payment shall be accompanied by the following:
 - a. Invoice or Bill of Sale from supplier or manufacturer showing destination, inventory or description, and dollar value of item(s) delivered.
 - b. Packing slip showing date of delivery and carrying a notation by ENGINEER, Resident Project Representative, or OWNER’S REPRESENTATIVE to the effect that the item(s) is in satisfactory condition and has been satisfactorily stored. Such notation shall not be construed as final acceptance of the item(s).
 - c. Proof of property damage insurance coverage in the amount of 100 percent of the value of the stored item(s). As a minimum, the certificate shall name not only the CONTRACTOR, but also the OWNER (as Additional Named Insured) to provide fire, extended coverage, vandalism and malicious mischief insurance for the stored items(s).

2. If the materials or equipment are delivered to an off-site warehouse, which must be located Within a reasonable distance of the site, the following additional data must accompany the application:
 - a. In lieu of the packing slip (above), a copy of the shipping receipt from the warehouse indicating that the item(s) was delivered and stored at the warehouse, including date of delivery and inventory listing thereof. The receipt shall carry a notation by ENGINEER, Resident Project Representative, [or OWNER’S Representative] to the effect that the item(s) is in satisfactory condition and has been satisfactorily stored. Such notation shall not be construed as final acceptance of the item(s).
 - b. Copy of letter from CONTRACTOR to the warehouse directing that the stored item(s) not be released except upon authorization of both CONTRACTOR, ENGINEER, Resident Project Representative, or OWNER’S Representative.
 - c. Letter from CONTRACTORS surety company to ENGINEER consenting to payment for the stored item(s) in accordance with the Contract Documents. This letter must identify the item(s) for which consent is given.

3. The amount requested for payment of stored materials or equipment shall not include any of the CONTRACTORS overhead, profit, or any other unrelated costs, and shall not exceed the price indicated for the item in the Schedule of Values submitted by the CONTRACTOR.”

Review of Application for Progress Payment

SC-14.7 Add the following language in front of the first sentence of General Conditions paragraph 14.7:

“ENGINEER will refuse to recommend any payment, regardless of amount otherwise due, unless any updated progress schedule required by the Contract Documents has been submitted by CONTRACTOR and found acceptable to ENGINEER”

Add the following language to the subparagraph 14.7 of the General Conditions, as follows:

SC-14.7.4 Add the following language to the end of subparagraph 14.7.4: “or contractor has failed to submit certifications, affidavits, schedules, or other written information when as required in the Contract Documents, or CONTRACTOR has failed to submit shop drawings in accordance with the shop drawing schedule”

Add the following new subparagraph immediately after subparagraph 14.7.8 of the General Conditions:

“SC-14.7.9 Liability for liquidated or other damages contained or referenced herein has been incurred by the CONTRACTOR”

Substantial Completion

SC-14.8 Delete the first sentence of General Condition 14.8 and replace with the following

“When CONTRACTOR considers the entire Work ready for its intended use, and after completion of required instruction of OWNER’S personnel in proper operation and maintenance of the Work and delivery of current record documents and operation & maintenance data to ENGINEER for OWNER in accordance with General and Supplementary Condition 6.19, CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that the ENGINEER issue a certificate of Substantial Completion.”

Add the following new subparagraph immediately after SC-14.8:

“SC-14.8.1 Once the project is deemed substantially complete in accordance with paragraph 14.8 of the General Conditions, Contractor shall apply for its next progress payment request, and OWNER will pay as its next progress payment to contractor an amount sufficient to increase total payments to CONTRACTOR to 100% of the final contract price, Less any retainer provided under subparagraph 5.3 of Agreement, and a retained amount which shall be equal two times the dollar value of any work remaining to be completed, as determined by ENGINEER and agreed to by OWNER; less retained amounts necessary to satisfy any claims, liens or judgments against the CONTRACTOR which have not been suitably discharged; and less any other sums which may be lawfully deducted, the net retained amount being termed the “Final Payment.” If ENGINEER’S certificate of substantial completion contains a list of items to be completed or corrected (GC-14.8), CONTRACTOR’S first application for payment after issuance of notice of Substantial Completion shall also include CONTRACTOR’S schedule for completing or correcting such items”

Partial Utilization

Add the following sentence to the end of subparagraph 14.10.1 of the General Conditions:

“However, the OWNER reserves the right to delay accepting, using, or operating any part of the work until the entire work is completed.”

Final Inspection

Paragraph 14.11 of the General Conditions is hereby deleted in its entirety and the following is substitute in its place:

“SC-14.11 When Contractor considers Work or an agreed upon portion thereof is complete, written certification shall be submitted stating that the work is ready for final inspection, and specifically indicating that the Contractor has:

1. Reviewed Contract Documents
2. Completed Work in accordance with Contract Documents, and all deficiencies Listed with Certificate of Substantial Completion have been corrected.
3. Inspected Work for compliance with Contract Documents

After receipt of such certification and after completion of contractors cleaning of the area and equipment in accordance with sub-part entitled ‘Final Cleaning’ in this section, ENGINEER will make final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.”

Final Application for Payment

SC-14.12 Add the following Language to paragraph 14.12 of the General Conditions:

“ The application shall be made on forms provided by the ENGINEER. By signing the application and certificate for payment, the CONTRACTOR certifies that the total cost of the Work and the amount due the CONTRACTOR for payment is full compensation for all Work done under the terms of the contract in its original form; that payment is full compensation for all work ordered to be done under Change Orders; and that the payment is full compensation for all other work done by the CONTRACTOR for doing and furnishing everything relating to or arising out of the Work, and that the CONTRACTOR waives all rights to claim or receive any further compensation in addition to that provided for the Final Payment except as provided in paragraph 14.15.”

Final Payment and Acceptance

SC-14.13 Delete the phrase “Thirty Days” which begins the last sentence of paragraph 14.13 of the General Conditions and substitute in its place the phrase “Forty-five days.”

Add the following language to paragraph 14.13 of the General Conditions:

The amounts retained to satisfy any claims, liens, or judgments against CONTRACTOR will be released to CONTRACTOR if evidence satisfactory to OWNER is promptly furnished that such claims, liens, or judgments were suitably discharged. Any claims, liens, or judgments referred to in these Contract Documents shall

pertain to the project and must be filed in accordance with the terms of the applicable contract and/or applicable laws.”

SC-14.14 Delete the last two sentences of paragraph 14.4 of the General Conditions and add the following language to the end thereof:

“The amount retained to assure final completion of the work will be released to CONTRACTOR when all items are completed and the Work is acceptable to ENGINEER; such payment will be made by OWNER within forty-five (45) days after the date he receives notification from the ENGINEER that work is acceptable complete. The amounts retained to satisfy any claims, liens, or judgments against CONTRACTOR will be released to CONTRACTOR if evidence satisfactory to OWNER is promptly furnished that such claims, liens, judgments were suitably discharged. Any claims, liens or judgments referred to in these Contract Documents shall pertain to the project and must be filed in accordance with the terms of the applicable contract and/or applicable laws.”

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

SC- 15.2.4 Insert the word “applicable” in front of the term “Laws and Regulations” as the same appears in paragraph 15.2.4

SC-15.4.2 Strike the last phrase of the last sentence reading “plus fair and reasonable sums for overhead and profit on such expense.” And replace it with the following: Plus overhead and profit on such expense in the manner described in paragraph 11.4 and 11.5.”

SC-15.5 CONTRACTOR May stop Work or Terminate

Amend paragraph 15.5 of the General Conditions as Follows:

- a. Change the phrase “or OWNER fails for thirty days to pay CONTRACTOR any sum Finally determined to be due,” which begins on the fifth line of GC-15.5, to read: “or OWNER fails for sixty days to pay CONTRACTOR any sum finally determined to be due.”
- b. Change the phrase “ or OWNER has failed for thirty days to pay CONTRACTOR any Sum finally determined to be due.” Which begins on the fifteenth line of GC-15.5, to read; “or OWNER has failed for sixty days to pay CONTRACTOR any sums finally determined to be due.”

ARTICLE 16- MEDIATION

Delete the title of Article 16 and replace with “MEDIATION”

Delete all of Article 16 of the General Conditions and substitute in its place the following:

MEDIATION

SC-16.1 Claims, disputes, or other matters in controversy arising out of or related to the agreement except those waved as provided for in the Contract Documents shall be subject to mediation. The terms of this Article 16 shall survive the owner’s acceptance of the work or termination of the Contract.

SC-16.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its

Construction Industry Mediation Procedures in effect on the date of the agreement (but specifically excluding any provision therein, of law or otherwise, adopting or referencing local, federal, or state law or the effect of which would be to permit, or otherwise authorize, enforcement of such mediation decision). A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the Mediation.

SC-16.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the project is located, unless another location is mutually agreed upon.

ARTICLE 17- MISCELLANEOUS

17.2 Computation of Times

SC-17.2.1 Legal holidays shall include those defined as such by the laws of the Nation, The United States or the State of New York.

17.4 Cumulative Remedies

Insert the following language at the beginning of paragraph 17.4:

"Except as limited by sections 17.7 and 17.8 of the Supplementary Conditions,"

Add the following under Article 17:

17.6 Equal Opportunity

SC-17.6.1 CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, or national origin. Such action shall include but not be limited to, 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. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

SC-17.6.2 CONTRACTOR will state in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, marital status, national origin, ancestry, present or past history of mental disorder, mental retardation, or physical disability, including but not limited to, blindness.

SC-17.6.3 CONTRACTOR will send to each labor union or representative of workers with which it has collective bargaining agreement or other contract or understanding a notice advising the labor union or workers representative of CONTRACTOR'S commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment,

17.8 Limited Liability of OWNER

SC-17.8 Notwithstanding anything herein to the contrary, the liability of OWNER to CONTRACTOR and/or any other person in connection with the Project and the Contract shall not in the aggregate exceed the then remaining amounts, if any, of monies allocated to the Project under the Bond Documents. Furthermore, in no event shall OWNER'S liability resulting from work performed hereunder exceed CONTRACTOR'S liability

in connection therewith. Notwithstanding the provisions of this paragraph 17.11, nothing herein shall be construed or interpreted to be a waiver of sovereign immunity by OWNER.

17.9 Seneca Nation of Indians Tribal Employment Rights Ordinance.

SC-17.9 Contractor hereby acknowledges the Seneca Nation of Indians Tribal Employment Rights Ordinance (TERO) attached to the General Conditions as Exhibit GC-B. CONTRACTOR, by its execution of the General Conditions and Supplementary Conditions, represents that it has read and understands fully the requirements of TERO, and CONTRACTOR hereby agrees that it is bound by and will fully comply with TERO and any other amendments or modifications thereto, including but not limited to any actions taken by the Seneca Nation of Indians pursuant to TERO. CONTRACTOR agrees that, if for any reason, the Seneca Nation of Indians determines that CONTRACTOR cannot continue to discharge its duties under the Contract, such determination shall be considered a substantial breach of the Contract Documents by the CONTRACTOR, at which time OWNER shall have the benefit of all rights, remedies and redress against CONTRACTOR that the Seneca Nation of Indians has against OWNER under TERO. CONTRACTOR acknowledges that it is responsible for any fees required to be paid for the project pursuant to TERO unless CONTRACTOR has been notified in writing that such requirement has been formally waived by the Seneca Nation.

17.10 Confidentiality

SC-17.10.1 The Parties agree that this Agreement and all information and data exchanged by them in accordance with the Contract that is non-public, proprietary and/or confidential in nature, including but not limited to any and all drawings, specifications. Plans and methodology drafted and/or utilized in connection with the project, shall be maintained in strict and absolute confidence, except upon prior written notice and with respect to disclosure (i) pursuant to the sale, disposition or other alienation (directly or indirectly) of a Party's rights and interest in and to the Contract, (ii) pursuant to the sale or other disposition (directly or indirectly) of all or substantially all of a Party, (iii) in conjunction with merger, consolidation, share exchange or other form of statutory reorganization involving a Party, (iv) to lenders, accountants, and other representatives of the disclosing Party with need to know such information, (v) as required to make disclosure in compliance with any law, under compulsion of judicial process, to comply with this Agreement and its objectives, or (vi) to Parties accountants, attorneys, and any government entity (where required), provided that the disclosing Party shall be liable for any disclosure by the receiving person to the extent such disclosure would not be permitted by this Section if made by the disclosing Party.

SC17.10.2 CONTRACTOR agrees not to mention the Project or use the name, logo or any other marks owned by or associated with OWNER or the Seneca Nation of Indians, including without limitation the name of any representative of OWNER or the Seneca Nation of Indians, including without any limitation the name of any representative of OWNER, in any sales promotion work or advertising, or any form of publicity, without the written permission of OWNER in each instance.

17.11 Buy American Act- Supplies and Construction Materials.

SC-17.11 CONTRACTOR agrees to comply with the requirements of United States 43 CFR 12.700 through 12.730 (Buy American Act- Supplies) and 43 CFR 12.800 through 12.830 (Buy American Act-Construction Materials).

17.12 Registration with Central Contractor Registration (CCR) Database.

The contractor shall register with the CCR database (www.ccr.gov) and complete other registration requirements as determined by the Director, Office of Management and Budget.

SC-17.12 ARBITRATION

SC-17.12 Any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement (but specifically excluding any provision therein, of law or otherwise, adopting or referencing local, federal, or state law, or the effect of which would be to permit or otherwise authorize, enforcement of such arbitration award). A demand for arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration. The Party filing a notice of demand for arbitration must assert in the demand all claims the known to that party on which arbitration is permitted to be demanded.

A demand for arbitration shall be made no earlier than concurrently with filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitation purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on claim.

TRIBAL EMPLOYMENT RIGHTS

ORDINANCE



(ENACTED: JUNE 23, 1993

EFFECTIVE JUNE 23, 1993)

AMENDED:	APRIL 16, 1994
AMENDED:	APRIL 13, 1996
AMENDED:	JULY 11, 1998
AMENDED:	DECEMBER 11, 2004
AMENDED:	NOVEMBER 12, 2005
AMENDED:	AUGUST 12, 2006
AMENDED:	OCTOBER 13, 2007
AMENDED:	SEPTEMBER 20, 2008
AND	
EFFECTIVE:	FEBRUARY 14, 2009
AMENDED:	MAY 12, 2012
AMENDED:	AUGUST 6, 2012
AMENDED:	JULY 14, 2018

SENECA NATION OF INDIANS
TRIBAL EMPLOYMENT RIGHTS ORDINANCE

SECTION 1: DECLARATION OF POLICY

As a guide to the interpretation and application of this Ordinance, the Seneca Nation of Indians declares that the public policy will be as follows:

Like land, water, and minerals; jobs, contracts, and subcontracts in the private sector on or near the Seneca Nation Territories are an important resource for Indian people and Indians must use their rights to obtain their rightful share of such opportunities as they become available. Indians have unique and special employment, contract, and subcontract rights and the Seneca Nation Tribal Government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians. Indians are also entitled to the protection of the laws that the Federal Government has adopted to combat employment discrimination, and tribal governments can and should play a role in the enforcement of these laws. The Seneca Nation believes that establishing a Tribal Employment Rights Office (TERO) is important in order to use the aforementioned laws and powers to increase employment of Indian workers and businesses to eradicate discrimination against Indians.

SECTION 2: DEFINITIONS

- A. "Employee" means any person employed for remuneration.
- B. "Employer" means any person, partnership, corporation, or any other business entity that employs for wages two or more employees.
- C. "Covered Employer" means any employer employing two or more employees who during any 30-Day period, spend, cumulatively, 40 or more hours performing work within the exterior boundaries of any Nation Lands as defined in Section 2.H.
- D. "Entity" means any partnership, sole proprietorship, corporations, joint venture, government, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be as broad and encompassing as possible to ensure the Ordinance's coverage overall employment and contract activities within the Tribe's jurisdiction, and the term shall be so interpreted by the Commission and the courts.
- E. "Commission" means the Seneca Nation Tribal Employment Rights Commission established by this Ordinance.
- F. "Indian" shall mean all persons who are members of any recognized Indian Nation or Tribe.
- G. "Member" shall mean an individual who is an enrolled member of the Seneca Nation of Indians.

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- H. "Nation Lands" shall mean the Allegany, Cattaraugus, Oil Spring, Buffalo Creek and Niagara Falls Territories, and any other lands now or hereafter owned in fee by the Nation or any Nation-created entity and within 25 miles of restricted fee lands of the Nation. Nation Lands shall also include the public rights-of-way of an Indian Reservation Roads, as that term is defined in Title 23 of the United States Code.
- I. "Qualified" shall mean any Indian or Indian-Owned Firm meeting the minimum requirements for a position, contract or subcontract as determined by the Director to be necessary for the proper performance of the work. When establishing minimum job requirements for categories of employees of an employer or entity, the Director may request a covered employer or entity to submit job descriptions and/or minimum requirements for review and approval by the Director. The Director may modify the job description and minimum job requirements to ensure that only those requirements necessary for the proper performance of the contract work are listed for the position and that a covered employer or entity has not used qualification criteria for such job requirements to serve as barriers to Indian employment.
- J. "Indian-Owned Firm" shall mean an entity which is:
1. Fifty-one percent (51%) or more Indian-owned, such that Indians provide real value for their ownership interest, obtain majority voting rights regarding decisions of the entity, are entitled to and receive at least fifty-one percent (51%) of all profits, and are entitled to at least fifty-one (51%) of the assets on dissolution of the entity.
 2. Under significant Indian management, such that at least one Indian is substantially involved in the day-to-day management of the firm as his or her primary employment.
 3. Not created solely or primarily to take advantage of Indian preference.
 4. Employs Indians in all or most positions for which qualified Indians are available.
 5. Have proper insurance coverage, including liability, workmen's' compensation and other essential coverages.
- K. "Law Enforcement" shall mean any Seneca Nation of Indians Police, Marshals, Conservation Officer, or any other department that is given enforcement power over Seneca Nation Laws.
- L. "Competitive business" shall mean businesses which provide or receive goods and services which are subject to frequent fluctuations and market price and services.

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M. "Seneca-owned business" shall mean a business owned by one or more Members. N.

"Day" or "Days" shall mean calendar days.

SECTION 3: INDIAN PREFERENCE IN EMPLOYMENT

All covered employers for all employment occurring within the exterior boundaries of any Nation Lands shall give preference to qualified Indians in all hiring, promotion, training, and all other aspects of employment, in accord with the following priorities:

first preference to qualified enrolled Seneca Nation members;

second preference to qualified non-enrolled Seneca Nation members supporting a Seneca family;

third preference to qualified non-Indian or nonmember Indians residing with and supporting a Seneca family;

fourth preference to other qualified Native Americans enrolled with any other Tribe;

fifth preference to qualified non-Indians.

The foregoing preferences shall also be applied in reverse order to any layoffs or reductions-in-force so that enrolled Seneca Nation members and other Indians are retained in positions of employment to the extent practicable. Covered employers shall further seek to have at least 51% of its employees who are working within the exterior boundaries of the Nation's Lands be qualified Indians. This 51% Indian workforce participation goal shall otherwise mean the aggregate number of person-hours worked (including training) on-site by Indian persons (including supervisory personnel and stewards) performing work pursuant to the contract divided by the total number of person-hours worked on-site in the performance of said contract.

All covered employers shall comply with the rules, regulations, guidelines, and orders of the Seneca Nation Tribal Employment Rights Commission which set forth the specific obligations of employers in regard to Indian preference in employment, provided, however that these requirements shall not apply to:

1. Any direct employment by any federal, state, or local and tribal governments or their subdivisions;
2. Any direct employment by not-for-profit organizations.

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3. Direct employment by public utility companies for routine installation, maintenance and emergency repairs.

This Ordinance shall apply to all contractors, or grantees of such governments, not-for-profit and to all commercial enterprises operated by such governments. It shall apply to all contractors and subcontractors of any public utility company.

SECTION 4: INDIAN PREFERENCE IN CONTRACTING

- A. The prime contractor shall be required to comply with all other requirements of this Ordinance, including Indian preference in subcontracting, employment and payment of the Employment Rights fee. This Ordinance shall apply to any construction contract awarded by any department within the Seneca Nation, even if said contracts must be submitted to Tribal Council for approval. This Ordinance shall apply to all subcontracts awarded by a tribal, federal, or state direct contractor or grantee, whether or not the prime contract was subject to these requirements. All covered entities shall comply with the rules, regulations, guidelines, and orders of the Commission, which set forth the specific obligations of such entities in regard to Indian preference in contracting and subcontracting and employment.
- B. This Ordinance shall not apply to private individuals or Seneca-owned businesses except where such private individual or Seneca-owned business is bidding on a contract or subcontract that is funded by the Seneca Nation or any other government entity.
- C. A Compliance Plan must be completed by all contractors and subcontractors, and approved by the TERO Director before work can commence.
- D. All bid specifics must include the TERO bid language. To the extent practicable, the obligation to comply with this TERO Ordinance shall also be expressly stated in contracts and subcontracts, provided, however, that the failure to include this in a contract or subcontract shall not relieve a covered entity's obligation to comply with this Ordinance.

SECTION 4A: INDIAN PREFERENCE IN CONTRACTING FOR SALAMANCA
CITY CENTRAL SCHOOL DISTRICT RECONSTRUCTION PROJECT

When the Salamanca City Central School District (the "School District") is undertaking within the Allegany Territory a reconstruction project funded by New York State Construction Aid funding, the following provisions shall apply in lieu of Section 4 of this Ordinance:

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- A. The School District, or its construction manager, shall award contracts or subcontracts for supplies, services, labor and materials in an amount of \$250 or more where the majority of the work on the contract or subcontract will occur within the exterior boundaries of any Nation Land shall give preference to qualified entities, which are certified by the Commission as 51% or more Indian-owned and controlled, in accord with the following preferences:

first preference to qualified Indian-Owned Firms that are certified by the Commission as "100% Seneca";

second preference to qualified Indian-Owned Firms that are certified by the Commission as "100% Indian-Majority Seneca" with greater preference within this subcategory given to those entities that have the higher percentage of ownership by Members;

third preference to qualified Indian-Owned Firms that are certified by the Commission as "Majority Seneca";

fourth preference to qualified Commission-certified Indian-Owned Firms, with greater preference within this subcategory give to those Indian-owned firms that have the higher percentage of ownership by Members;

fifth preference, in the event that no qualified Indian-Owned Firm bids on the project, to other qualified firms.

It shall be a violation of this Ordinance for any covered entity awarding contracts or subcontracts for supplies, services, labor and materials to bid contracts or subcontracts below the dollar threshold set forth in Sec. 4A.A. or time its contracts or subcontracts which have the effect of circumventing the goals and purposes of this Ordinance.

- B. When a contract is awarded, based upon price and specifications that are not subject to negotiation, the contract shall be awarded to the qualified Indian-Owned Firm with the lowest responsive bid if it is reasonable and is equal to the bid of the lowest bidder from any other qualified source, in accord with the priorities set out in Section 4A.A.
- C. The prime contractor shall be required to comply with all other requirements of this Ordinance, including Indian preference in subcontracting consistent with this Section 4A, employment and payment of the Employment Rights fee. This Ordinance shall apply to all subcontracts awarded by a tribal, federal, or state direct contractor or grantee, whether or not the prime contract was subject to these requirements. All covered entities shall comply with the rules, regulations, guidelines, and orders of the Commission, which set forth the specific obligations of such entities in regard to

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Indian preference in contracting and subcontracting and employment.

- D. This Ordinance shall not apply to private individuals or Seneca-owned businesses except where such private individual or Seneca-owned business is bidding on a contract or subcontract that is funded by the Seneca Nation or any other government entity.
- E. A Compliance Plan must be completed by all contractors and subcontractors, and approved by the TERO Director before work can commence.
- F. All bid specifics must include the TERO bid language. To the extent practicable, the obligation to comply with this TERO Ordinance shall also be expressly stated in contracts and subcontracts, provided, however, that the failure to include this in a contract or subcontract shall not relieve a covered entity's obligation to comply with this Ordinance.

SECTION 4B: CERTIFICATION OF ENTITIES AS AN "INDIAN-OWNED FIRM"

- A. Any entity which seeks certification as an "Indian-Owned Firm" eligible for the preferences provided under this Ordinance shall submit to the TERO Director an application for certification as an Indian-Owned Firm on a form established by the Commission accompanied by documents and records sufficient to allow the Commission to determine whether the entity meets the criteria for certification set out in Sections 2.1 and 4B of this Ordinance. In addition, an entity which seeks certification as an Indian-owned firm eligible for the preferences provided under this Ordinance, shall submit a new application or renewal application annually. In the event that any of the information submitted by an entity pursuant to this Section 4B changes, the entity is required to provide written notice to the Commission of any such change along with documentation relevant to such change.

Any entity seeking certification, or certification renewal, as "100% Seneca" shall include with the application a non-refundable application fee of \$250.00 payable by check to the Seneca Nation of Indians. All other certification and certification renewal applications shall include with the application a non-refundable application fee of \$500.00 payable by check to the Seneca Nation of Indians. Upon receipt, the application fees shall be deposited in the Nation's general fund, and the TERO shall receive an allocation of such fees by Council action as may be necessary for the TERO to satisfy its obligations.

- B. The application (and all renewal applications) shall be submitted to the TERO Director no later than the time that the entity submits a bid on a project that is subject to bidding, and a copy of the application with supporting documentation, including

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the application fee, shall also accompany the bid. If the contract is not subject to bid procedures, an application for certification as an Indian-Owned Firm shall be submitted to the TERO Director before any contract will be made with the entity, and entities are encouraged to submit their applications at as early a date as practicable.

- C. Documentation will be required to establish eligibility for certification as an Indian owned firm. The failure to provide valid documentation will result in a Commission decision denying certification of the entity. Documentation required shall include, but are not necessarily limited to:
1. The identity of the Indian owners and the names and addresses of the tribes in which each such person is enrolled;
 2. Documents showing how the entity was established and the ownership and control of such entity. For corporations and limited liability corporations this would include a copy of the articles of incorporation, charter and/or bylaws, and a certified listing of share ownership in the corporation including any and all rights and interest in such shares. For partnerships, limited liability partnerships and any other form of joint venture, this should include a copy of the written agreement by which that partnership, limited liability partnership or joint venture has been established and which shows ownership interests and control as between the parties to the agreement.
 3. Copies of all insurance policies and verification that the premiums have been paid. The TERO Director has the authority to investigate the insurance and bonding requirements in ensure they are proper and current.
- D. It is the responsibility of the entity, and the individual owners of such entity seeking certification as an "Indian-Owned Firm" under this Ordinance to provide accurate, complete and timely information to the Commission. Failure to provide accurate, complete and timely application shall be grounds for a Commission decision not to certify the entity as an Indian-Owned Firm. In the event that false information is found to have been provided to the Commission, the Commission shall have authority to investigate the matter pursuant to Sections 12, 13 and 14, and to take enforcement action and impose penalties under the procedures established by section 15. Certified Indian-Owned Firms shall have an affirmative duty to notify the Commission, within a reasonable period of time subsequent to its certification as an Indian-Owned Firm, of any changes in its organization which may affect its status as an Indian-Owned Firm or any changes in its insurance coverage or bonds.
- E. A Commission decision not to certify an entity as an Indian-Owned Firm may be reviewed pursuant to Section 16 if a suit seeking such review is filed within 15 Days from a decision of the Commission. Such review shall be limited to review of the records as provided to the Commission and the Commission's decision shall be set

aside only if it is found to be arbitrary, in excess of the authority of the Commission or not supported by the records provided to the Commission. Any decision following such review shall be limited to prospective relief, shall not include injunctive relief that would affect contracts already awarded, and shall not include any claims for damages. The Commission's decision shall stay in effect unless and until reversed by the Nation's Courts in a final, non-appealable decision.

SECTION 4C: ADDITIONAL CERTIFICATION

- A. In addition to certification as an "Indian-owned firm," an entity may seek additional certification to qualify for certain preferences in contracting and subcontracting. The purpose of the additional certification process is not to penalize Indian-Owned Firms that have partnered with or otherwise secured the expertise of non-Indians or non-Members to form a team with a given level of capacity and capability. Rather, the purpose is to ensure that a certified Indian-Owned Firm receives the appropriate preference consideration relative to other Indian Owned Firms under the Ordinance when competing for contracts and subcontracts.
- B. An applicant seeking to qualify for preference in contracting and/or subcontracting as an Indian-Owned Firm that is "100% Seneca," "100% Indian-Majority Seneca," or "Majority Seneca" shall submit proof of the applicant's Indian ownership and control to the TERO Director. The TERO Director shall review the material submitted and make a recommendation to the Commission as to whether the applicant firm meets the minimum ownership and control requirements for additional certification.
- C. The ownership and control requirements applicable to each preference category are as follows:
 1. 100% Seneca. In order for an Indian-owned firm to be additionally certified as "100% Seneca," the documentation must establish the following:
 - a. Members own 100% of the firm, are entitled to 100% of all profits, and are entitled to 100% of the assets of the firm upon dissolution; and
 - b. Members exercise 100% of the management and supervisory control of the day-to-day operations of the business, including that all key employees are Members. The employment of non-Members who are not key employees will not disqualify the firm from certification in this category, provided that the non-Members they do not exercise or have the authority to exercise, any management or supervisory functions for the firm.
 2. 100% Indian-Majority Seneca. In order for an Indian-owned firm to be additionally certified as "100% Indian-Majority Seneca," the documentation must establish the following:

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- a. Indians own 100% of the firm are entitled to 100% of all profits, and are entitled to 100% of the assets of the firm upon dissolution;
- b. Members own at least 51% of the firm are entitled to at least 51% of all profits, and are entitled to at least 51% of the assets of the firm upon dissolution;
- c. Indians exercise 100% of the management and supervisory control of the day-to-day operations of the business, including that all key employees are Indians; and
- d. Members exercise majority control of the business and are substantially involved in the day-to-day management and operations of the business.

3. Majority Seneca. In order for an Indian-owned firm to be additionally certified as "Majority Seneca," the documentation must establish the following:

- a. Members own at least 51% of the firm are entitled to at least 51% of all profits, and are entitled to at least 51% of the assets of the firm upon dissolution; and
- b. Members exercise majority control of the business and are substantially involved in the day-to-day management and operations of the business.

D. The following factors will be applied in determining whether the firm meets the minimum ownership requirements for the applicable certification category:

1. Value. The Indian owner(s) must establish that they provided real value for their stated ownership interest by providing capital, equipment, real property, or similar assets commensurate with the value of their ownership share. It will not be considered "real value" if the Indian(s) purchased their ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner(s) of the firm or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the Indian owner(s) brought such special skills, marketing connections, or similar benefits to the firm that there is a good reason to believe that arrangement would have been entered into even if there were not an Indian preference program in existence under the Ordinance.

Where an Indian owner can demonstrate that he or she could not pay good value for the ownership interest because the normal capital sources were closed to him or her because he or she Indian, that person may satisfy this requirement by demonstrating further that he or she extended his or her capital raising capability as far as possible, such that the Indian owner clearly is at risk in the business in relationship to his or her means.

2. Profits. The Indian owner(s) will receive the percentage of all profits equal to their ownership interest. If there is any provision that gives the non-Indian owner a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, additional

certification shall be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that the Indian owners are receiving profits equal to their ownership interest.

E. In determining whether the firm meets the minimum ownership requirements for the applicable certification category, the following will be considered in determining whether the firm is under significant Indian management and operational control:

1. To show Indian manage and supervisory control, one or more of the Indian owners must be substantially involved, as a senior level official, in the day-to-day management and operation of the firm. He or she must, through prior experience or training, have substantial occupational ties to the area of business in which the firm is engaged such that he or she is qualified to serve in the senior level position and is sufficiently knowledgeable about the firm's activities to be accountable for the firm's activities. The Indian owners must have the demonstrable ability to independently make basic decisions pertaining to the day-to-day operations of the firm. Office management, clerical, or other experience unrelated to the firm's field operations is insufficient to establish the requisite control necessary for certification.

2. There must be good reason to believe that the firm was not established solely or primarily to take advantage of the Indian preference program. In evaluating an applicant under this criterion the Commission will consider the factors set out below. The Commission shall exercise broad discretion in applying these criteria in order to preserve the integrity of the Indian preference program and, in close or questionable cases, may deny certification:

a. History of the Firm. Whether the history of the firm provides reason to believe it was established primarily to take advantage of the Indian preference program, and in particular whether the firm, a portion of the firm, or key actors in the firm originally were associated with a non- Indian-owned business that gained little of business value in terms of capital, expertise, equipment, etc., by adding ownership or by merging with an Indian firm.

b. Employees. Whether key non-Indian employees of the applicant are former employees of a non-Indian firm with which the Indian firm is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-Indian firm is controlling the applicant. Whether Indians are employed in all or most of the positions for which qualified Indians are available. A high percentage of non- Indian employees in such positions will provide reason to believe the firm was established primarily to benefit non-Indians.

- c. Relative Experience and Resources. Whether the experience, expertise, resources, etc., of the non-Indian partner(s) is so much greater than that of the Indian(s) that there is little sound business reason for the non-Indian to accept a junior role in the firm or venture other than to be able to take advantage of the Indian preference program.

- F. In considering the various factors relevant to the control of an Indian-Owned Firm, the Commission may, in the exercise of its discretion, decide in close cases to provide an additional certification to the entity at the next lowest level, if such factors for that level are otherwise satisfied, in order to allow the firm to more clearly develop over time the requisite demonstrable level of control for the category originally sought.

- G. A Commission decision not to certify an entity Indian-Owned Firm as "100% Seneca", "100% Indian-Majority Seneca", or "Majority Seneca" may be reviewed in accordance with Section 16 if a suit seeking review of that Commission decision is filed within 15 Days from a decision of the Commission. Such review shall be limited to review of the records as provided to the Commission and the Commission's decision shall be set aside only if it is found to be arbitrary, in excess of the authority of the Commission or not supported by the records provided to the Commission. Any decision following such review shall be limited to prospective relief, shall not include injunctive relief that would affect contracts already awarded, and shall not include any claims for damages. The Commission's decision shall stay in effect unless and until reversed by the Nation's Courts in a final, non-appealable decision.

SECTION 5: UNIONS

Any covered employer who has a collective bargaining agreement with one or more unions shall obtain written agreement from such union(s) stating that the union shall comply with the Indian preference laws and with the rules, regulations, and guidelines of the Seneca Nation. Such agreement shall be subject to the approval of the TERO Director.

SECTION 6: COMMISSION; MEMBERS; QUORUM

- A. There is created a Seneca Nation Employment Rights Commission.

- B. The Commission shall be composed of five Commissioners, to serve a two-year term, nominated by the Seneca Nation President and appointed by the Seneca Nation Tribal Council, with at least two members from each Reservation. The Commission shall designate one of its members as Commission chairperson.

- C. At least three of the Commissioners shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all powers of the Commission until the vacancy is filled. Vacancies must be filled

within 60 Days. Three consecutive unexcused absences from Commission meetings by a member of the Commission shall result in the member's automatic removal from the Commission.

SECTION 7: POWERS OF THE COMMISSION

The Commission has the full power, jurisdiction, and authority to:

- A. Formulate, adopt, amend, and rescind rules, regulations, and guidelines necessary for the Commission to function.
- B. Require each covered employer or entity to submit to the Director, an acceptable Compliance Plan indicating how it will comply with this Ordinance, before a covered employer or entity commences work within the exterior boundaries of any Nation Lands.
- C. Require the Director to impose numerical goals and timetables that specify the minimum number of Indians a covered employer must hire.
- D. Require covered employers to establish or participate in training programs the Commission determines necessary in order to increase the pool of qualified Indians on any Nation Lands.
- E. Prohibit covered employers from using qualification criteria in their personnel requirements that serve as barriers to Indian employment.
- F. To enter into agreements with unions to insure union compliance with this Ordinance. Such agreements shall in no way constitute recognition or endorsement of any union.
- G. Impose contra(£ and subcontract preference requirements with first preference as stated in this Ordinance and establish and operate a system for certifying firms as eligible for Seneca and other Indian preference.

SECTION 8: DIRECTOR; QUALIFICATIONS; STAFF; DUTIES

- A. The TERO Director shall have authority to hire staff, to expend funds appropriated by the Seneca Nation Tribal Council, and to obtain and expend funding from federal, state, or other sources to carry out the purposes of this Ordinance, subject to approval by the TERO Commission and the Seneca Nation Tribal Council.
- B. The TERO Director shall administer the policies, authorities and duties prescribed for him/her in this Ordinance and delegated to him/her by the Commission pursuant to Section 9.

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- C. Establish in conjunction with tribal employment and training programs, a tribal hiring hall or skills bank and impose a requirement that no covered employer may hire a non-Indian until the TERO office has certified that no qualified Indian is available to fill the vacancy, with preferences in referral as defined in Section 3.
- D. The Director shall have the authority to review and sign Compliance Plans. It will be the Director's responsibility to ensure that Indian preference is given in contracting, subcontracting and employment.
- E. The Commission shall have the authority to recommend corrective action or removal of the TERO Director.

SECTION 9: DELEGATION OF AUTHORITY

The Commission shall delegate to the Tribal Employment Rights Office Director the authority to carry out the day-to-day operations of the Tribal Employment Rights Office and such other authority as is convenient or necessary to the efficient administration of this Ordinance, except that the Commission may not delegate its power or duty to:

- A. Adopt, amend and/or rescind rules, regulations or guidelines.
- B. To conduct hearings or to impose sanctions pursuant to Section 15.

SECTION 10: INTERGOVERNMENTAL RELATIONSHIPS

The Commission, acting through the TERO Director, is authorized to enter into cooperative relationships with federal employment rights agencies such as the EEOC and the Office of Federal Contract Compliance Programs (OFCCP), in order to eliminate discrimination against Indians within and outside Nation Lands.

SECTION 11: EMPLOYMENT RIGHTS FEE

An Employment Rights fee to raise revenue for the operation of the Tribal Employment Rights Office is imposed as follows:

- A. Every covered employer with a prime construction contract in the sum of \$50,000 or more shall pay a one-time fee of 5% of the total amount of the contract. Such fee shall be paid by the employer prior to commencing work on any Nation Lands. However, where good cause is shown, the Commission may authorize a construction contractor to pay said fee in installments over the course of the contract.

- B. The fee shall be non-refundable once a project has commenced.
- C. The TERO Director shall be responsible for collecting said fees pursuant to any rules and regulations adopted by the Commission. Said fees shall be paid to the Seneca Nation Treasurer and, upon receipt, shall be deposited in the Nation's general fund, and the TERO shall receive an allocation of such fees by Council action as may be necessary for the TERO to satisfy its obligations.
- D. The TERO Director shall waive the Employment Rights fee where the covered employer is the Seneca Nation of Indians or any department, corporation, or agency of the Seneca Nation.

SECTION 12: COMPLAINTS

Any individual, group of individuals, or organization that believes any covered employer or entity, or the Commission has violated any requirements imposed by this Ordinance or regulations issued pursuant to it, may file a complaint with the TERO Director. The complaint shall be in writing and shall provide such information as is necessary to enable the TERO Director to carry out an investigation. The TERO Director shall investigate every complaint filed with him/her. If upon investigation he or she has reason to believe a violation has occurred, he/she shall proceed pursuant to the provisions of Section 15. Within 20 Days after receipt of the complaint and on a regular basis thereafter, the TERO Director shall provide the complaining party with a written report on the status of the complaint.

SECTION 13: INVESTIGATIONS

On his/her own initiative or pursuant to a complaint, the TERO Director or any field compliance officer designated by the TERO Director shall make such public or private investigations within any Nation Lands, as he/she or the Commission deems necessary to determine whether any covered employer or other covered entity has violated any provision of this Ordinance or any rule or order hereunder, or to aid in prescribing rules, regulations, and guidelines hereunder. The TERO Director or his delegate may enter during business hours the place of business or employment of any covered employer for the purpose of such investigations and may require the covered employer or entity to submit such reports as he deems necessary to monitor compliance with the requirements of the Ordinance or any rule or order hereunder.

SECTION 14: POWER TO REQUIRE TESTIMONY & PRODUCTION OF RECORDS

For the purpose of investigations or hearings, which in the opinion of the TERO Director or the Commission, are necessary and proper for the enforcement of this Ordinance, a Commissioner, the TERO Director, or any field compliance officer designated by the TERO Director, may take evidence, and require by citation, the production of books, papers, contracts, agreements or other documents, records or information which the TERO Director or Commission deems relevant or

materials to the inquiry. The Commission shall have the authority to administer oaths or affirmations and subpoena witnesses.

Any entity's state or federal tax records, payroll information, or financial reports subpoenaed pursuant to this section or used in a compliance hearing or subsequent appeal to the Tribal Court of Appeals, shall be confidential records and shall not be open to public inspection. They shall be used only by the TERO Director, the Commission, parties to a Compliance hearing or the Tribal Court of Appeals.

SECTION 15: ENFORCEMENT

- A. When after conducting an investigation initiated by a complaint pursuant to Section 12, or a self-initiated investigation pursuant to Section 13, there is reason to believe a violation of the Ordinance or regulations issued pursuant to it has occurred, the TERO Director or Compliance Officer shall notify the covered employer or entity in writing, specifying the alleged violations. However, he/she may withhold the name(s) of the complaining party if there is reason to believe such party shall be subject to retaliation. The TERO Director or Compliance Officer shall seek to achieve an informal settlement of the alleged violation. If unable to do so, the TERO Director or Compliance Officer shall issue a formal written notice of noncompliance which shall also advise the covered employer or entity of his right to request a hearing.
- B.
 - I. The formal written notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer or entity with five Days to come into compliance. If the TERO Director or Compliance Officer believes irreparable harm will occur during that period, he/she may require that compliance occur within fewer than five Days.
 2. If the party fails or refuses to comply, the TERO Director or Compliance Officer may request a hearing before the Commission. The hearing shall be held as soon as practicable but no later than ten Days after the date of compliance established in the TERO Director's or Compliance Officer's formal notice of a violation, unless the Commission deems an expedited hearing necessary to avoid irreparable harm.
 3. If a party fails or refuses to comply and does not request a hearing, the Commission may proceed pursuant to Subsection F.
- C. If the party requests a hearing pursuant to Subsection B.2, and the TERO Director or Compliance Officer has good cause to believe that there is a danger that the party requesting the hearing will remove itself or its property from the jurisdiction of the Nation prior to the hearing, he/she, in his/her discretion, require the party to post a

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bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the party at the hearing. If the party fails or refuses to post said bond, the Commission may proceed pursuant to Subsection F. The TERO Director or Compliance Officer may also petition the Seneca Nation Peacemakers Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the pendency of the complaint and hearing proceedings.

- D. Any hearing held pursuant to Subsection B.2 shall be conducted by the Commission. Conduct of the hearing shall be governed by the rules of practice and procedure which may be adopted by the Commission. The Commission shall not be bound by technical rules of evidence in the conduct of hearings under this Ordinance, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order decision, rule or regulation made, approved, or confirmed by the Commission. The proceedings and testimony shall be recorded at the request of the party charged or at the Commission's initiative.
- E. Any covered employer or other person subject to Nation jurisdiction which retaliates against any employee, employer, union or other entity because of its exercise or rights under this law, or compliance with provisions of this law, shall be subject to the sanctions set forth in Subsection F.
- F. If no hearing is requested under Subsection B.2, or after a hearing the Commission finds the party in violation and no adequate defense in law or fact exist, or the party failed or refused to post a bond under Subsection C, the Commission may:
 - 1. Deny such party the right to commence business within Nation Lands.
 - 2. Suspend such party's operation within Nation Lands.
 - 3. Terminate such party's operation within Nation Lands.
 - 4. Deny the right of such party to conduct any further business within Nation Lands.
 - 5. Impose a civil fine on such party in an amount not to exceed \$5000 for each violation.
 - 6. Order such party to make payment of back pay to any aggrieved Indian covered under this Ordinance.
 - 7. Order such party to dismiss any employees hired in violation of this Ordinance or Commission guidelines.

8. Order the party to take such action as is necessary to ensure compliance with this Ordinance or to remedy any harm caused by a violation of this Ordinance consistent with the requirements of 25 U.S.C. 1301 et seq. (Indian Civil Rights Act).

The Commission's decision shall be in writing, and served on the parties by registered mail or in person, no later than thirty Days after the close of the hearing provided in Subsection D. Where the party's failure to comply immediately with the Commission's orders may cause irreparable harm, the Commission may request injunctive relief before the Peacemakers Court pending the party's appeal or expiration of the time for appeal.

SECTION 16: APPEALS

- A. An appeal to the Nation's Court may be taken from any final order of the Commission by any party adversely affected thereby. Except as otherwise provided in this Ordinance, the time lines and filing requirements under the civil procedure shall be used in filing an appeal. The Courts shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission is arbitrary, capricious or in excess of the authority of the Commission. Except as provided in Subsection B of this Section, the order of the Commission shall abate pending a final, non-appealable determination by the Nation's Courts. Upon petition, the Peacemaker's Court may order a party to post a bond sufficient to cover the Commission's assessment against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order, if that order is upheld by the Courts.
- B. If at any stage in the enforcement process the Commission has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Nation's Courts, such that the Commission or Courts will not be able to collect monetary damages or TERO fees that are (a) owed by that party pursuant to any outstanding order of the Commission or Nation Court, or (b) which will be owed if the charges set out in any outstanding notice of violations are upheld, the Commission may petition the Peacemaker's Court pursuant to the rules and procedures of that court to attach and hold sufficient property of the party to secure compliance or for such other relief as is necessary and appropriate to protect the right of the Commission and other affected parties.

SECTION 17: CONFISCATION AND SALE

If 31 Days after sanctions have been imposed by the Commission pursuant to Subsection E of Section 15 no appeal has been filed, or 31 Days after a decision by the Court of Appeals pursuant to Subsection A of Section 16, a party has failed to pay monetary damages imposed on it or otherwise failed to comply with an order of the Commission or the Court, the TERO Director or

Court or Court of Appeals may order the Seneca Nation Law Enforcement to confiscate and hold for sale the parties' property to ensure payment or to achieve compliance. Any confiscation order shall be accompanied by a list of the parties' property believed to be within the jurisdiction of the Seneca Nation, the value approximating the amount of monetary damages owed. The Seneca Nation Law Enforcement shall deliver in person a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. If 30 Days after confiscation the party has not come into compliance, the Seneca Nation shall sell said property and use the proceeds to pay any outstanding monetary damages imposed by the Commission and all cost incurred by the court, the law enforcement in the confiscation and sale. All proceeds remaining shall be returned to the party.

SECTION 18: ORDERS TO LAW ENFORCEMENT

The Seneca Nation of Indians Law Enforcement Departments are hereby expressly authorized and directed to enforce such cease and desist or related orders as may from time to time be properly issued by the TERO Commission, Director or Tribal Courts. Such orders do not require a judicial decree or order to render them enforceable. The Law Enforcement Officer shall not be civilly liable for enforcing such orders so long as the order is signed by the Director and the Commission.

SECTION 19: FAIR LABOR STANDARDS

The provisions of the Federal Fair Labor Standards Act, as amended now or in the future, regarding minimum wages, overtime, fringe benefits, and time for payment of wages, are adopted by reference in and by this Ordinance. The Commission shall have the authority to monitor and enforce those requirements, pursuant to the monitoring and enforcement authorities provided generally to the Commission by this Ordinance. Provided that, this section shall apply only to those employers who are otherwise covered by the Federal law. No employer who is not presently subject to the Federal Laws (or subsequently made subject by amendments or court decisions) shall be covered by this section. The purpose of this section is to give the Commission the parallel authority to monitor and enforce the fair labor requirements against those already covered by the Federal law, not to expand such requirements to employers not already covered. In imposing back pay awards, penalties and interest sanctions under this provision, the Commission shall credit an employer with any back pay, interest or penalties paid pursuant to an order of settlement entered into with the Federal government for the same violation.

SECTION 20: SEVERABILITY

If for any circumstance, provision(s) or sections of this Ordinance are held invalid by the appropriate court of jurisdiction, the remainder of this Ordinance and other provisions or sections will not be affected in the application of the Ordinance of any person, employers and others covered by the Ordinance.

TRIBAL EMPLOYMENT RIGHTS ORDINANCE
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SECTION 21: EFFECTIVE DATE

This Ordinance shall be effective from the date of its approval by the Seneca Nation Tribal Council.

Enacted: June 23, 1993
Effective: June 23, 1993
Amended: April 16, 1994
Amended: April 13, 1996
Amended: July 11, 1998
Amended: December 11, 2004
Amended: November 12, 2005
Amended: August 12, 2006
Amended: October 13, 2007
Amended: September 20, 2008 (effective February 14, 2009)
Amended: May 12, 2012
Amended: August 6, 2012
Amended: July 14, 2018

TECHNICAL SPECIFICATIONS

DIVISION 1 - GENERAL REQUIREMENTS

SECTION 1A - SUMMARY OF WORK AND REQUIREMENTS

1. **GENERAL:** The technical specifications for this contract are under the direct supervision of the Project Engineer. All questions pertaining to these specifications should be directed in writing to:

Joel Merrill
Seneca Nation of Indians Health System
987 RC Hoag Dr.
Salamanca, NY 14779
Telephone: (716) 945-5894 x5277
Email: joel.merrill@senecahealth.org

2. **LOCATION AND DESCRIPTION OF WORK:** The work covered by these specifications will be constructed at the Sullivan Hollow housing development, off Sullivan Hollow, on the Allegany Territory.

The work includes water main replacement and related work.

3. **SUBMITTALS**

A. Submittals are required:

1. Where called for in these specifications or on the drawings.
2. For any item the Contractor proposes to substitute for a specified item as an "or equal".
3. For any proposed design change or deviation from these specifications or the drawings.
4. For method of disposal and disposal location of any materials to be removed.

B. **Two sets of submittals shall be provided to the Project Engineer at least two weeks before a determination is required. Substitutions or deviations require approval by the Project Engineer.**

C. See General Conditions and Supplementary Conditions

4. **RECORD DRAWINGS (AS-BUILTS)**

See General Conditions and Supplementary Conditions

The Contractor shall mark up one set of paper prints to show the as-built information. These as-builts shall be kept current and **available on the job site at all times**. All changes from the contract plans which are made in the work or additional information which might be uncovered in the course of construction shall be accurately and neatly recorded as they occur by means of details and notes. No construction work shall be concealed until the necessary record data has been recorded. The as-builts will be inspected for accuracy and completeness by the Project Manager, Project Engineer, and a responsible representative of the Contractor prior to submission of each partial payment, as evidenced by the issuance of a receipt by the Project Manager indicating the adequacy of the information. Failure to keep the as-constructed marked prints on a current basis shall be sufficient justification to withhold approval of request for payment or suspend pay estimates. The drawings

shall show the following information, but not limited thereto.

- A. The location and description of any utility lines or other installations of any kind or description known to exist within the construction area. The location includes dimensions to permanent features.
- B. The location and dimensions of any changes from the contract drawings.
- C. Changes in details of design or additional information obtained from working drawings specified to be prepared and/or furnished by the Contractor including but not limited to fabrication, erection, installation plans, and placing details, pipe size, insulation materials, dimensions of equipment foundations, etc.
- D. All changes or modifications which result from the final inspection.
- E. All information as required in the technical provisions.

Review and Approval: One set of the preliminary as-builts marked prints shall be delivered to the owner before final inspection for his review and approval. The review by the owner will be expedited; however, the owner cannot guarantee to review more than one complex mechanical or electrical record drawing sheet per working day. Upon disapproval of the as-builts one set of marked prints will be returned to the Contractor for further work and resubmitted to the owner.

Other: All costs incurred by the Contractor in the preparation and furnishing of as-builts shall be included in the contract price and no separate payment will be made for this work. Approval and acceptance of as-builts must be accomplished before final payment is made to the Contractor.

5. WARRANTIES

See General Conditions and Supplementary Conditions

Unless otherwise indicated, the Contractor shall warrant all materials provided and work performed under this contract for a period of one year from the date of final acceptance. He shall replace promptly and at his own expense any materials and workmanship which fails during this warranty period.

6. PROTECTION OF SITE

See General Conditions and Supplementary Conditions

Except as otherwise provided herein, the Contractor shall protect all utilities, fences, structures, walks, trees, shrubbery, lawns, etc. The Contractor shall make every effort to maintain continuity of the services of the community. During the progress of the work he shall remove all debris and unused materials and shall, upon completion of the work, restore the site as nearly as possible to its original condition, including the replacement, at the Contractor's sole expense, any facility or landscaping which has been destroyed or damaged beyond restoration.

7. UTILITIES

Unless otherwise indicated in these specifications, the Contractor shall arrange for and provide any required utilities at his sole cost and expense. This includes but is not limited to water for compaction or testing, power for operating his plant or equipment including testing installed equipment, and

personnel sanitation facilities.

8. SAFETY REQUIREMENTS

See General Conditions and Supplementary Conditions

The Contractor shall comply with all pertinent provisions of the Department of Labor "Safety and Health Regulations for Construction (29 CFR Part 1926 and applicable sections of Part 1910)", with additions or modifications thereto, in effect during construction of this project.

Excavations and adjacent areas must be inspected by a competent person at the start of each work day and as needed throughout the day for evidence of hazardous conditions or developing hazardous conditions. **Prior to the start of construction**, the Contractor shall provide the Project Engineer a list of person(s) who meet OSHA requirements as a "competent person", and who will be on site to conduct the daily inspections when required. A record of these daily inspections shall be kept by the Contractor and be made available to the Project Engineer or his/her representative upon request. It is the Contractor's responsibility to become knowledgeable of the regulation and comply with all requirements contained therein.

The Project Engineer or designated representative shall notify the Contractor of any uncorrected non-compliance. The Contractor shall after receipt of such notice, immediately correct the conditions to which attention has been directed. Such notice, when served to the Contractor or his/her representative at the site, shall be deemed sufficient.

If the Contractor fails or refuses to comply promptly with requirements, the Project Engineer may issue an order to suspend all or any part of the work. However, if a life jeopardizing condition exists, the Project Engineer or designated representative shall have the authority to stop work immediately by oral instruction. When satisfactory corrective action has been taken, an order to resume work will be issued.

The following measures or provisions are to be adhered to at all times during the construction of this project:

- A. All heavy construction machinery to include trenching machines, bulldozers, backhoes, etc., must be equipped with a roll bar meeting the requirements of the above regulation, and;
- B. Safety helmets will be worn by all personnel working at the site, and;
- C. Safety boots or sturdy leather work boots will be worn by all personnel working at the site.
- D. Other personal protective equipment, such as goggles, earplugs, gloves, and respirators shall be worn by employees where conditions dictate their use.
- E. All personnel working at the site shall comply with all of the provisions of the most recent State and Federal confined space entry regulations.

9. STANDARD SPECIFICATIONS

When referred to in these specifications, the following and others in attached specifications means the latest edition, publication, standard, or specification of:

AASHTO American Association of State Highway and Transportation Officials.

ACI	American Concrete Institute.
ANSI	American National Standards Institute.
ASTM	American Society for Testing and Materials.
AWWA	American Waterworks Association.
FDA	Food and Drug Administration.
NEMA	National Electrical Manufacturers Association.
NEC	National Electrical Code.
NSF	National Sanitation Foundation.
OSHA	Occupational Safety and Health Administration.
SSPC	Steel Structures Painting Council.
UL	Underwriters Laboratories, Inc.
UPC	Uniform Plumbing Code.

10. NOTIFICATION REQUIREMENTS

It shall be the Contractor's responsibility to notify all utility companies involved whenever a utility line is to be cut, tapped, moved, or in any way disturbed from its original placement. Sufficient notice shall be given to the utility company so that its users can be informed of any disruption of service. Such notice must be given no less than 24 hours in advance.

11. INTERFERENCE WITH PUBLIC WORKS

The Contractor shall conduct operations so as to not close or obstruct any portion of any highway, road, street or private driveway; or prevent free access to fire hydrants until permission has been obtained from the proper authorities. Any highway or street maintenance or repair work required by local authorities in connection with necessary operations under this contract shall be performed by the Contractor at his/her expense.

12. CONSTRUCTION SCHEDULE: See General Conditions and Supplementary Conditions

13. CLEAN UP

During construction, the Contractor shall maintain a clean, safe working environment. Upon completion of the work, the site shall be cleared of all debris and ground surface shall be finished to smooth uniform slopes and shall present a neat and workmanlike appearance. Clean-up shall be considered an incidental item and no separate payment shall be made for any clean-up item.

SECTION 01025

MEASUREMENT AND PAYMENT

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Measurement and payment criteria applicable to the Work performed under a unit price or lump sum payment method.
- B. Defect assessment and non-payment for rejected work.

1.02 AUTHORITY

- A. Measurement methods delineated in the individual Specification Sections complement the criteria of this Section. In the event of conflict, the ENGINEER will make a determination of which measurement method(s) shall govern.
- B. The CONTRACTOR shall take all measurements and compute quantities. The ENGINEER will verify measurements and quantities.
- C. The CONTRACTOR shall assist the ENGINEER by providing necessary equipment, workers, and/or survey personnel as required.
- D. To best facilitate agreement on quantities eligible for payment, the CONTRACTOR and the Resident Inspector shall agree on actual quantities of Work completed under each Pay Item at the end of each Work day, and shall attest to their approval by each signing the days quantity sheet. These daily quantity sheets shall then be tabulated to facilitate the Partial Payment estimates discussed elsewhere in the Contract Documents.

1.03 UNIT QUANTITIES SPECIFIED

- A. Quantities indicated in the Bid Form are for bidding, contract purposes, and comparison of the bids only; they are not intended to be absolute. Actual quantities and measurements supplied or placed in the Work, and verified by the ENGINEER, determine actual payment.
- B. If the actual Work requires more or fewer quantities than those quantities indicated, the CONTRACTOR shall provide the required quantities at the unit sum/prices contracted, unless otherwise permitted by execution of a Change Order.
- C. Variations in quantity are to be expected in the final quantities, and no claim for extra payment will be allowed due to changes in quantities from those herein, unless otherwise permitted by execution of a Change Order.
- D. The OWNER does not expressly or by implication agree that the nature of the materials encountered below the surface of the ground, or the actual quantities of materials required will correspond therewith, and reserves the right to increase or decrease any quantity or to eliminate any quantity, as the OWNER may deem necessary.
- E. Change Orders shall be executed as detailed in Article 10 of the General Conditions.
- F. Issuance of a Field Order of Work Change Directive shall not constitute a change of Contract Price or the Contract Times, and shall be executed as further detailed in the General Conditions.
- G. The OWNER/ENGINEER shall reserve the right to change the quantity used of any item, and/or eliminate any item, as the OWNER/ENGINEER may deem necessary. Quantities of individual items may be altered or eliminated based on the Bid Prices accepted, in an attempt to reduce project costs, or in an attempt to maximize the amount and type of work performed, for the accepted or revised Contract Amount.

1.04 MEASUREMENT OF QUANTITIES

- A. Measurement Devices:
 - 1. Weigh Scales: Inspected, tested, and certified by the State of New York Bureau of Weights and Measures with the last eighteen (18) months.
 - 2. Platform Scales: Of sufficient size and capacity to accommodate the conveying vehicle.
 - 3. Metering Devices: Inspected, tested, and certified by the State of New York Bureau of Weights and Measures within the last eighteen (18) months.
- B. Measurement by Weight: Concrete reinforcing steel, rolled or formed steel or other metal shapes will be measured by handbook weights. Welded assemblies will be measured by handbook or scale weight.
- C. Measurement by Volume: Measured by cubic dimensions using mean length, width, and height or thickness.
- D. Measurement by Area: Measured by square dimension using mean length and width or radius.
- E. Linear Measurement: Measured by linear dimension, at the item centerline or mean chord.
- F. Stipulated Sum/Price Measurement: Items measured by weight, volume, area, or linear means or combination, as a completed item or unit of Work.

1.05 PAYMENT

- A. Payment Includes: Full compensation for all required labor, products, tools, equipment, plant, transportation, services and incidentals; erection, application, or installation of an item of the Work; overhead, profit, and benefits.
- B. No direct or separate payment will be made for providing miscellaneous temporary or accessory works, unless paid for under a separate Bid Item, to include, but not be limited to, plant services, environmental controls, field offices of the CONTRACTOR, survey and layout, public safety controls (fencing, road plates, barrier, ribbon, etc.), job signs, test/exploration holes, sanitary requirements, testing (of all kinds), safety devices, dewatering, temporary restoration (until permanent restoration has been acceptably completed), snow removal (when required), work and costs associated with locating existing utilities, work and equipment associated with creation of record drawings, water supplies, power, removal of waste, watchmen, meetings, public notifications, bonds, insurance, permits and all other requirements of the General Conditions, Supplementary Conditions, and the general requirements of these Specifications. Compensation for all such services and materials shall be included in the prices stipulated for the lump sum and unit price items listed herein.
- C. No direct or separate payment will be made for the repair or replacement of existing facilities (i.e. utilities, service laterals (of all types), storm drains, drain pipes, mailboxes, signs, fences, etc.) damaged as a result of the CONTRACTOR'S activities, regardless if their locations were indicated on the Contract Drawings or not. The cost of this work shall be the sole responsibility of the CONTRACTOR. No additional compensation will be provided to the CONTRACTOR for any such work.
- D. Final payment for Work governed by unit prices will be made on the basis of the actual measurements and quantities accepted by the ENGINEER, multiplied by the unit price for the Work which is incorporated in or made necessary by the Work.
- E. The CONTRACTOR shall take note that no additional compensation will be provided for any and all costs associated with obtainment of water to be used for flushing, testing, disinfection of water mains, dust control, cleaning of roadways and etc., or for water required for any other reasons for completion of the work, as indicated by the Contract Documents, or as directed by the ENGINEER. The CONTRACTOR will be required to make all necessary and required arrangements to obtain water, and will be required to meter and pay for said water, at the current rates charged, if required by the water supplier.

- F. Work which was Bid and to be paid for on a lump sum basis, shall be measure - based on the Schedule of Values submitted by the CONTRACTOR prior to the start of Work, and the percent complete as approved by the ENGINEER. The CONTRACTOR shall note that even though this Work was Bid on a lump sum basis, the CONTRACTOR is not automatically due full compensation for the Work upon issuance of Final Payment. Payment will be made based on the Schedule of Values provide by the CONTRACTOR, and the percent completed by the CONTRACTOR, as approved by the ENGINEER.
- G. No direct payment will be made for Work required due to the CONTRACTOR'S work performed outside the payment limits, as indicated in the Contract Documents, or as further directed by the ENGINEER. This shall include work performed which is not in conformance with the alignment and grades shown on the Contract Drawings, unless otherwise directed by the ENGINEER. As such, the CONTRACTOR shall be solely responsible to have all proposed alignment and grade adjustments approved by the ENGINEER prior to performing the Work.
- H. No direct payment will be made for costs associated with the storage of materials and equipment, to include, but not be limited to, construction and restoration of staging areas, the CONTRACTOR'S office, easements, land agreements, permits, and all other work performed by the CONTRACTOR in association with the storage of materials and equipment.

1.06 DEFECT ASSESSMENT

- A. The CONTRACTOR shall Replace the Work, or portions of the Work, not conforming to specified requirements.
- B. If, in the opinion of the ENGINEER, it is not practical to remove and replace the Work, the ENGINEER will direct one of the following remedies:
 - 1. The defective Work may remain, but the unit price will be a new unit price at the discretion of the OWNER and the ENGINEER.
 - 2. The defective Work will be partially repaired to the instructions of the ENGINEER, and the unit price will be adjusted to a new unit price at the discretion of the OWNER and the ENGINEER.
- C. The individual Specification Sections may modify these options or may identify a specific formula or percentage price reduction.
- D. The authority of the ENGINEER to assess the defect and identify payment adjustment is final.

1.07 NON-PAYMENT FOR REJECTED PRODUCTS

- A. Payment will not be made for any of the following:
 - 1. Products wasted or disposed of in a manner that is not acceptable.
 - 2. Products determined as unacceptable before or after placement.
 - 3. Products not completely unloaded from the transporting vehicle.
 - 4. Products placed beyond the lines and levels of the required Work.
 - 5. Products remaining on hand after completion of the Work.
 - 6. Loading, hauling, and disposing of rejected Products.

1.08 SCHEDULE OF PAY ITEMS

BID ITEM 1 - Construction of Water Treatment Facility and Fire Suppression Piping at Sullivan Hollow

- 1. Payment for Item 1 - Complete, shall be made on a lump sum basis, and shall constitute payment in full for all labor, materials, tools, equipment, and coordination between contractors, necessary and required to complete all general construction required for the Sullivan Hollow water treatment plan, as indicated by the Contract Documents, as directed by the ENGINEER, to include all work

required to provide, tested and ready for use, the intended water treatment facility, as further described below.

2. The various sections of the Technical Specifications detail the proposed criteria by which the Work to be included and paid for under this item is to be completed, to include reference standards, material standards, design criteria, erection standards, testing standards, and manufacturer.
3. Work to be paid for and to be included in the lump sum price bid for Item 1 shall generally include but not be limited to the following:
 - a. All necessary and required site work, to include but not be limited to all clearing, grubbing, excavation, backfilling (**with all types of material**), bedding material, all **temporary and permanent restoration (of all kinds)**, permanent fencing and gates, all proposed trees and landscaping items, environmental controls, dewatering, all work associated with providing for a safe work-site and protection from the general public (to include all necessary and required fencing, watchman, barriers, ribbon, lighting, trench plates, and etc.), cleaning, and demolition and/or abandonment of existing facilities.
 - b. The furnishing and construction of one 400 SF concrete masonry unit building to generally include but not be limited to, all demolition, removal of equipment, cutting, concrete block, footings, foundation, concrete slab, lintels, rebar, structural fill (select, stone, etc.), floor drain and outlet piping, waterproofing, expansion material, grout, vapor barrier, insulation, caulking, wood trusses, wood framing, sheeting, building wrap, shingles, ice and water shield, vinyl siding, aluminum soffit and fascia, RFP paneling and trim, metal flashing and paneling, bond beam, vents, doors, door hardware, painting and sealing, drain piping, locks and keys, temporary and permanent lawn and asphalt driveway restoration.
 - c. The furnishing and installation of all necessary and required equipment and components, to generally include but not be limited to, well pump controller, tank level pressure transducer, flow-paced sodium hypochlorite system - complete (to include flow meter, controller, and injection pump), spill containment, chemical day tank, transfer pump, tubing, injection quills, vent piping to exterior, utility sink, shelving, signage, nameplates, and work tables.
 - d. Furnishing, installation and start-up of all heating and ventilation equipment including the propane unit heater as shown on the Contract Drawings and as further specified in the Contract Documents and/or directed by the Engineer.
 - e. The furnishing and installation of all necessary and required equipment and components, to generally include but not be limited to, booster pumps, booster control panels, pressure transducers, hydro-pneumatic tank, and valves as specified in the contract documents.
 - f. The furnishing and installation of all necessary and required equipment and components, to generally include but not be limited to, water filters, filter media, filter control heads, motorized alternating valves, and piping, fittings, and appurtenances as specified in the contract documents.
 - g. The furnishing and installation of all necessary and required equipment and components, to generally include but not be limited to, backwash disposal system, 1,500-gallon concrete septic tank, stone disposal trench, and all piping and appurtenances as specified in the contract documents.
 - h. The furnishing and installation of all necessary and required interior and exterior piping, to include but not limited to, trenching, excavation, disposal of unusable material (off-site), associated valves, fittings, and appurtenances, interconnections, pump #1 and pump #2

connections, concrete pedestal for booster pumps, coordination with the pump installer, hydrants, bedding material, backfill (of all types), piping (all types), tracer wire, fittings, valves, mechanical joint restraints, thrust blocking, connection to existing services, connection to pumps, capping, dewatering, and abandonment of existing piping and valves, master meters, check valves, butterfly valves, gate valves, adapters, pipe supports, raw water and finished water testing services/taps, faucets, hose bibs, painting and finishing, and all testing and disinfection..

- i. The furnishing and installation of all necessary and required electrical service connections, components, and equipment, to include but not be limited to, all necessary and required coordination and scheduling with the power provider, all conduit, wire (of all types - primary cable, secondary cable, service wire, control wire, etc.), equipment connections (booster pump, heater, meter, etc.), stand-by generator relocation and connection, poles, pull boxes, mule tape, marking tape, bedding material, mounting pedestal, grounding, transfer switch, disconnect, meter(s), electric panel(s), controls, motor disconnecting means switches, control panel(s), lighting, receptacles, switches, supports, electrical testing, inspections and certifications, other components depicted on the Contract Drawings or described in the Specifications, and all else necessary and required to provide a complete and functional system. It shall be noted that these Contract Documents are not intended to cover every detail or variation for the installation, or provide for every possible installation contingency. It is expected that the Work will be supervised and performed by qualified persons familiar with electrical construction practices, electrical equipment, safety, and all governing codes and regulations.
 - j. The relocation of all necessary and required liquified petroleum (LP) gas tank and piping, to include but not be limited to, all components and equipment, furnishing and installation of all necessary and required piping, valves, meters, adaptors, trenching, bedding, marking tape, tracer wire, backfilling (with all types of materials), coordination with the LP gas supplier, and all else necessary and required to provide a complete and functional system.
4. The CONTRACTOR shall be solely responsible to verify the existing conditions associated with performing this work, prior to ordering materials required for this work. No additional compensation will be provided for materials required, not necessarily depicted by the Contract Drawings, or inaccurately depicted by the Contract Drawings, unless otherwise approved by the ENGINEER. The Contract Drawings were assembled using the best available information provided to the ENGINEER at the time in which the Contract Drawings were assembled, but in no way does the ENGINEER expressly or by implication claim that the existing conditions depicted on the Contract Drawings to be absolutely accurate, and as such, highly recommends that the CONTRACTOR perform an exploratory excavation and investigation to verify field conditions. The CONTRACTOR shall notify the ENGINEER immediately of any discrepancies. The Cost of this work shall be included in the lump sum price bid for this Item.
 5. Measurement: The quantity to be paid for under this Item will be made on a lump sum basis in proportion to the amount of Work completed in accordance with the CONTRACTORS approved Schedule of Values.
 6. Payment: The lump sum price bid for this Item shall be full compensation, as shown and specified.

END OF SECTION

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SECTION 01290

SCHEDULE OF VALUES

PART 1 - GENERAL

1.01 DESCRIPTION

- A. The Schedule of Values is an itemized list that establishes the value or cost of each part of the Work. It shall be used as the basis for preparing progress payments and may be used as a basis for negotiations concerning additional work or credits, which may arise during the construction. Quantities and unit prices may be included in the schedule when approved by or required by the ENGINEER.

1.02 PREPARATION

- A. Schedule shall show breakdown of labor, materials equipment and other costs used in preparation of the Bid.
- B. Costs shall be in sufficient detail to indicate separate amounts for each Section of the Specifications.
- C. CONTRACTOR may include an item for bond, insurance, temporary facilities and job mobilization on lump sum project only. This item will be included for payment at a rate of 25 percent per month for the first four months.
- D. Schedule of Values shall be prepared on 8 1/2-inch by 11-inch white paper.
- E. Use Table of Contents of the Specifications as basis for Schedule format and identify each item with number and title in the Table of Contents. List sub-items of major products or systems as appropriate or when requested by ENGINEER.
- F. When requested by ENGINEER, support values with data that will substantiate their correctness.
- G. The sum of the individual values shown on the Schedule of Values must equal the total Contract Price.
- H. Each item shall include a directly proportional amount of the CONTRACTOR'S overhead and profit.
- I. Schedule shall show the purchase and delivery costs for materials and equipment that the CONTRACTOR anticipates he shall request payment for prior to their installation.

- J. Included in the detailed breakdown shall be a line item for “record documents”. This amount is for preparing and supplying required information and documentation as described in Section 01720, Survey Data.

1.03 SUBMITTAL

- A. Submit two copies of Schedule to ENGINEER for approval at least 20 days prior to submitting first application for a progress payment but no later than 10 days after date of execution of agreement. After review by ENGINEER, revise and resubmit Schedule as required until it is approved.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

SECTION 01311

COORDINATION WITH OWNER'S OPERATIONS

PART 1 - GENERAL

1.01 DESCRIPTION

- A. CONTRACTOR shall carry out all operations to avoid interference with the operations of the existing facilities.
- B. The CONTRACTOR shall not have exclusive possession of the sites of the work to be done under this contract.
- C. In the performance of the work, the CONTRACTOR shall schedule and cooperate fully with the OWNER and other Contractors, affording them facilities for the performance of their work even though it interferes with his own.
- D. Related Work Specified Elsewhere:
 - 1. Section 01731, Connections to Existing Facilities.
 - 2. Divisions 2-15, Technical Specifications.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

SECTION 01312

PRECONSTRUCTION CONFERENCE

PART 1 - GENERAL

1.01 DESCRIPTION

- A. Date, Time, and Location: Conference will be held after execution of the Agreement and before construction is started at the site. ENGINEER will fix the date, time and location of the meeting in accordance with the General Conditions.
- B. ENGINEER shall prepare agenda, preside at meeting, and prepare and distribute a transcript of proceedings to all parties.
- C. CONTRACTOR(S) shall provide data required, contribute appropriate items for discussion, and be prepared to discuss all items on agenda.
- D. CONTRACTOR shall prepare and distribute a preliminary construction schedule.

1.02 REQUIRED ATTENDANCE

- A. CONTRACTOR(S) and major Subcontractors.
- B. OWNER'S representative.
- C. ENGINEER.
- D. Representatives of governmental agencies having any degree of control or responsibility, if available.

1.03 AGENDA

- A. Agenda will include, but will not necessarily be limited to, the following:
 - 1. Designation of responsible personnel.
 - 2. Subcontractors.
 - 3. Coordination with other contractors.
 - 4. Construction schedule.
 - 5. Review preliminary construction schedule.
 - 6. Processing of Shop Drawings.
 - 7. Schedule of Shop Drawing submittals.
 - 8. Processing of Field Orders and Change Orders.
 - 9. Requirements for copies of Contract Documents.
 - 10. Insurance in force.
 - 11. Schedule of Values.
 - 12. Processing of progress payments.

13. Cash flow.
14. Use of premises.
15. CONTRACTOR(S) responsibility for safety and first aid procedures.
16. Security.
17. Housekeeping.
18. Field Offices.
19. Record Drawings.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

SECTION 01450

TESTING LABORATORY SERVICES FURNISHED BY CONTRACTOR

PART 1 - GENERAL

1.01 DESCRIPTION

- A. CONTRACTOR shall employ and pay for an independent testing laboratory to perform the specified services. Laboratory selected shall be subject to approval by the ENGINEER.
- B. Inspection, sampling and testing shall be as specified in the Technical Sections.

1.02 QUALIFICATIONS OF LABORATORY

- A. Where applicable, meet “Recommended Requirements for Independent Laboratory Qualification”, latest edition, published by American Council of Independent Laboratories and the basic requirements of ASTM E329, Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction
- B. The laboratory shall be certified by New York State for testing potable water. A NYS ELAP number shall be referenced on all test results.
- C. Submit copies of ELAP certificates for all potable water testing.
- D. Submit copy of report of inspection of facilities made by Materials Reference Laboratory of National Bureau of Standards during most recent tour of inspection; with memorandum of remedies of any deficiencies reported by inspection.
- E. Testing Equipment:
 - 1. Calibrated at maximum 12 month intervals by devices of accuracy traceable to either National Bureau of Standards or accepted values of natural physical constants.
 - 2. Submit copy of certificate of calibration, made by accredited calibration agency.

1.03 LABORATORY DUTIES

- A. Cooperate with ENGINEER and provide qualified personnel promptly on notice.
- B. Perform specified inspections, sampling and testing of materials and methods of construction; comply with applicable standards; ascertain compliance with requirements of Contract Documents.

- C. Promptly notify ENGINEER and CONTRACTOR of irregularities or deficiencies of Work, which are observed during performance of services.
- D. Promptly submit 5 copies of reports of inspections and tests to ENGINEER including:
 - 1. Date issued.
 - 2. Project title and number.
 - 3. Testing laboratory name and address.
 - 4. Name and signature of inspector.
 - 5. Date of inspection or sampling.
 - 6. Record of temperature and weather.
 - 7. Date of test.
 - 8. Identification of product and Specification Section.
 - 9. Location in Project.
 - 10. Type of inspection or test.
 - 11. Results of tests and observations regarding compliance with Contract Documents.
- E. Perform additional tests and services as required to assure compliance with the Contract Documents.

1.04 CONTRACTOR'S COORDINATION WITH LABORATORY

- A. Cooperate with laboratory personnel, provide access to Work and to manufacturer's operations.
- B. Provide to laboratory, representative samples of materials to be tested, in required quantities.
- C. Furnish labor and facilities:
 - 1. To provide access to Work to be tested.
 - 2. To obtain and handle samples at the site.
 - 3. To facilitate inspections and tests.
 - 4. For laboratory's exclusive use for storage and curing of test samples.
 - 5. Forms for preparing concrete test beams and cylinders.
- D. Notify laboratory and ENGINEER sufficiently in advance of operations to allow for assignment of personnel and scheduling of tests.

1.05 PRODUCT TEST REPORTS

- A. Furnish copies of product test reports where required by the Specifications or requested by ENGINEER.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

SECTION 01550

MAINTENANCE AND PROTECTION OF TRAFFIC

PART 1 - GENERAL

1.01 DESCRIPTION

- A. Work Specified
The work specified shall include all labor, material, equipment, services and incidentals necessary to maintain and protect vehicular and pedestrian traffic through all construction areas.
- B. Related Work Specified Elsewhere
 - 1. Division 2-15, Technical Specifications,
 - 2. Section 15051 - Buried Piping Installation

1.02 QUALITY ASSURANCE

- A. Reference Standards
New York State Department of Transportation Standard Specifications, latest revision.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION

3.01 GENERAL

- A. This work shall consist of maintaining traffic and protecting the public from damage to person and property within the limits of and for the duration of the Contract.
- B. All existing site roads, streets, sidewalks, and traffic ways shall be kept open for the passage of traffic and pedestrians during the construction period unless otherwise approved by the OWNER, ENGINEER or authority having jurisdiction over same.
- C. When required to cross, obstruct or temporarily close a existing site road, street, sidewalk or trafficway, CONTRACTOR shall provide and maintain suitable detours or other approved temporary expedient for the accommodation of traffic. Closings shall be for the shortest time practical, and passage shall be restored immediately after completion of backfill and temporary paving or bridging.

- D. CONTRACTOR shall give 48 hours advance notice to the fire and police departments of his proposed operations including temporary shutdowns.
- E. CONTRACTOR shall provide signs, signals, barricades, flares, lights and all other equipment, service and personnel required to regulate and protect all traffic, and warn of hazards. All such work shall conform to requirements of the OWNER or authority having jurisdiction. Remove temporary equipment and facilities when no longer required, restore grounds to original, or to specified conditions.
- F. Traffic shall be maintained over a reasonably smooth traveled way which shall be so marked by signs, delineators, guiding devices and other methods, that a person who has no knowledge of conditions may safely, and with a minimum of discomfort and inconvenience, ride, drive or walk, day or night, over all or any portion of the street under construction where traffic is to be maintained. All work shall conform to the requirements of the current New York State Manual of Uniform Traffic Control Devices.
- G. CONTRACTOR shall control dust and keep the traveled way free from materials spilled from hauling equipment.
- H. CONTRACTOR shall provide the necessary traffic control equipment and flagmen for adequate traffic control on the traveled way. Flaggers shall be used where opposing traffic is restricted to one (1) lane or where other conditions require, or as required by permit conditions.
- I. CONTRACTOR shall provide ingress and egress to and from intersecting streets, homes, businesses and commercial establishments.
- J. CONTRACTOR shall provide adequate protection for pedestrian traffic during all phases of construction.
- K. CONTRACTOR shall maintain existing bus stops, if any, so passengers are reasonably accommodated.
- L. CONTRACTOR shall make the necessary repairs to existing pavement as required to provide a reasonable smooth traveled way where vehicle operation is maintained.
- M. The CONTRACTOR'S responsibility to the public is to protect the public from damage to person and property, which may result directly or indirectly from any construction operation.
- N. The CONTRACTOR shall provide temporary markings in accordance with provisions of the New York State Manual of Uniform Traffic Control Devices, as

required by the agency having jurisdiction, as shown in the plans and specifications and/or as ordered by the ENGINEER

- O. The CONTRACTOR shall schedule work to keep to a minimum and consistent with the physical requirements of the contract, the amount of existing pavement and/or facilities that are destroyed or substantially torn up at any one time.
- P. The CONTRACTOR shall at all times conduct his operations in a manner to insure the convenience of the motorist, the pedestrians and the abutting property owners and their safety as well as the safety of his own employees.
- Q. The CONTRACTOR shall furnish, install, move, remove and maintain all signs and barricades and lighting for construction barricades as shown on the plans or as ordered by the ENGINEER, and in accordance with the NYS Manual of Uniform Traffic Control Devices.
- R. The CONTRACTOR shall provide and maintain delineation and guiding devices which shall include: delineators, barrels, flashers, railing, temporary curb of any kind, pavement markings, and other similar materials or methods acceptable to the ENGINEER
- S. The CONTRACTOR shall construct, move or remove, as directed, temporary structures, approaches, detours, pavements and necessary appurtenances.
- T. The CONTRACTOR will be responsible to prepare a maintenance and protection of traffic plan and submit the plan to the ENGINEER for information and the Erie County Highway Department and/or NYS DOT (as required) for approval. The maintenance and protection of traffic plan shall be prepared by an engineer licensed to practice in the State of New York.

3.02 PARKING CONTROL

- A. Control all CONTRACTOR related vehicular parking within the limits of the Work to preclude interference with public traffic or parking, access by emergency vehicles, OWNER'S operations, or construction operations. Provide temporary parking facilities as may be required because of construction or operations.
- B. Monitor parking of all construction and private vehicles:
 - 1. Maintain free vehicular access to and through parking areas.
 - 2. Prohibit parking on or adjacent to access roads, or in non-designated areas.
 - 3. Parking will not be allowed in areas which limit sight distance of passing motorists.
 - 4. CONTRACTOR is responsible for his vehicles while on-site.

3.03 HAUL ROUTES

- A. Consult with governing authorities and establish thoroughfares which will be used as haul routes and site access.
- B. Provide traffic control of haul routes to expedite traffic flow and to minimize interference with normal traffic.

3.04 ADDITIONAL REQUIREMENTS

- A. The CONTRACTOR shall maintain the traveled way reasonable smooth and hard at all times, and shall be well drained and free of potholes, bumps, irregularities and depressions that hold or retain water. Construction operations shall be conducted to insure a minimum of delay to traffic. Stopping traffic for more than five minutes shall not be permitted unless specifically authorized, in writing, by the ENGINEER. The necessary equipment and personnel to attain and maintain a satisfactory riding surface shall be available and used as needed at all times when work is under way and when work is temporarily suspended for any period of time. Special attention to maintenance of a satisfactory traveled way shall be given during weekends, holidays and the winter season.
- B. The CONTRACTOR shall provide a sufficient number of competent flagmen in areas where traffic exists, particularly where construction equipment is operating. Each flagger shall use an orange safety vest. The vest shall be worn outside all other clothing worn by the flagger.
- C. Traffic shall be maintained in accordance with the details shown in conformance with the New York State Manual of Uniform Traffic Control Devices.
- D. Fencing
 - 1. The CONTRACTOR shall completely enclose all open excavations and all other potentially hazardous location, at the end of each working day by temporary fences. Fencing shall be not less than four feet in height, mounted in steel angles or other satisfactory means of support rigidly driven into the ground and spaced at intervals not to exceed eight feet. A minimum of one flasher per fifteen feet of fencing will be required. In areas where an excavation is to remain open in excess of 14 calendar days, rigid fencing will be required having supports at intervals not to exceed four feet. Snow fence, cyclone fence, or wire fabric with rectangular mesh are considered minimally acceptable fencing materials.
 - 2. The ENGINEER in charge may limit, extend, include or exclude areas to be fenced as conditions warrant.
- E. Where sidewalk has been removed by the CONTRACTOR, he will be responsible for establishing a temporary stabilized walk for pedestrian traffic within 24 hours after removal of the sidewalk. This sidewalk may be located in the location of the

original sidewalk or adjacent to the original sidewalk, providing there is an adequate right-of-way and the new location is safe for pedestrian traffic. The minimum width of the walkway is 4 feet. No additional Payment will be made for installing and/or maintaining this walkway by the CONTRACTOR.

- F. All existing highway signs and supports within the Contract limits are to remain and are to be maintained for the duration of the Contract by the CONTRACTOR.
- G. On postal routes, mailboxes serviced from motor vehicles shall be maintained by the CONTRACTOR in a usable location during construction. The CONTRACTOR should not move any mailbox which contains mail. He will advise the property owner to remove such mail before he moves the box. Before acceptance of the work, any mailbox which has been disturbed or removed shall be replaced in size, kind and type by the CONTRACTOR in a location acceptable to the property owner and the ENGINEER.
- H. CONTRACTOR must provide access to all school buses and emergency vehicles including ambulances, police cars, fire engines, etc., traveling through or stopping at any part of the construction site. At his expense, CONTRACTOR will yield to these vehicles and cease construction activities, as necessary.

END OF SECTION

SECTION 01720

SURVEY DATA

PART 1 - GENERAL

1.01 DESCRIPTION

- A. CONTRACTOR shall keep neat legible notes of all measurements and calculations made by him while surveying and laying out the Work. Furnish copies of notes to ENGINEER every two weeks or as requested.
- B. When any survey monument or property marker, whether of stone, concrete, wood, or metal, or a mark on the pavement, designating the lines of private property, is in the line of any trench or other construction work and may have to be removed, the CONTRACTOR shall notify the ENGINEER in writing at least 24-hours in advance of removal. Under no circumstances shall such monument or marker be removed or disturbed by the CONTRACTOR or by any of his subcontractors, employees, or agents, without a written order from the ENGINEER. The CONTRACTOR shall furnish the necessary labor and materials required in resetting any monument or property marker under the direct supervision of the ENGINEER. Should any monument be destroyed through accident, neglect or other cause, the CONTRACTOR will be required at his own expense to employ a licensed surveyor acceptable to the ENGINEER to reestablish the monument or marker.

1.02 PIPELINE ELEVATIONS

- A. CONTRACTOR shall take survey elevation of the top of the newly installed pipeline at all tees; changes in vertical alignment; and, at 100 foot intervals.
- B. Survey elevations shall be performed to NAD83 datum.

1.03 SUBMITTALS

- A. One copy of all notes shall be furnished to the ENGINEER and one copy furnished to the OWNER with Record Drawings.

PART 2 - MATERIALS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

SECTION 01731

CONNECTIONS TO EXISTING FACILITIES

PART 1 - GENERAL

1.01 DESCRIPTION

- A. Perform all construction necessary to complete connections and tie-ins to existing facilities.
- B. Keep existing facilities in operation unless otherwise specifically permitted in these Specifications or approved by OWNER.
- C. CONTRACTOR shall perform all construction activities so as to avoid interference with operations of the facility and the work of others, and the safety and quality of the finished water.
- D. Related work specified elsewhere:
 - 1. Section 01311, Coordination with OWNER'S Operations.
 - 2. Divisions 2-15, Technical Specifications.

1.02 GENERAL INFORMATION

- A. Construction of interconnections is subject to CONTRACTOR'S submittal of materials, detailed procedures, schedules, etc. required by the contract. The following is for information only and the CONTRACTOR is responsible for all interconnections and abandonments.
- B. The CONTRACTOR shall not operate existing valves. Once a new watermain is placed into service, CONTRACTOR shall not operate those valves.
- C. The OWNER only shall operate existing valves. The CONTRACTOR is advised that watertight conditions may not exist when existing valves are closed. The CONTRACTOR shall consider this in his bid.
- D. The CONTRACTOR shall perform test pits at existing pipes, valves, etc. as needed to perform the work or directed. Watermain installation and the pipe laying schedule should reflect the field information obtained by the test pits. The stationing of tees, fittings and valves should be coordinated with the test pit information in order to facilitate construction of the new watermains and construction of the interconnections.
- E. The CONTRACTOR shall submit to the ENGINEER his proposed interconnection details, procedures and schedules.

- F. The CONTRACTOR shall notify all affected customers of any shut-down at least 48 hours in advance.
- G. The CONTRACTOR shall notify appropriate fire stations 48 hours in advance prior to taking any fire hydrants out of service. Any hydrant not in service shall be bagged in burlap.
- H. Any shut-down shall be limited to 4 consecutive hours.
- I. The CONTRACTOR shall have all equipment, manpower, and materials required for the construction on site and ready for use and/or prior to commencing any shut-down or removing any existing facilities.
- J. The CONTRACTOR shall schedule and coordinate his work with others in accordance with the specifications and shall coordinate all proposed shut-downs with the ENGINEER and OWNER. The work shall be scheduled through the ENGINEER so that the OWNER has a minimum of three (3) working days advance notice.
- K. Only one interconnection will be allowed until the proposed watermain and end of line valves (if applicable) have been installed, tested and disinfected and the ENGINEER authorizes the interconnections.
- L. Caps (or plugs) on iron pipe shall be mechanically restrained watertight caps (or plugs) compatible with the pipe being capped and suitable to resist thrusts due to operating pressures.
- M. Temporary caps shall be watertight and shall remain in place until the actual interconnections are made.
- N. In unpaved areas, all interconnection joints shall remain exposed and tested under operating pressure for a 24-hour period.
- O. If no leaks occur, the exposed interconnection piping can, upon ENGINEER'S authorization, be backfilled.
- P. The CONTRACTOR shall dewater trenches, existing mains, etc. as required to perform the interconnections.
- Q. The CONTRACTOR shall submit his detailed procedures for his interconnection sequence to the ENGINEER.
- R. If the CONTRACTOR wishes to propose construction of several interconnections at one time, he shall submit a written, detailed proposal to the ENGINEER.

- S. No work shall begin on the interconnections until the ENGINEER authorizes the work.
- T. Firms performing taps on existing waterlines shall be acceptable to the OWNER.
- U. All joints at interconnections shall be mechanically restrained.
- V. New hydrants shall remain bagged in burlap (except for flushing and/or testing) until placed into service.
- W. The interconnections and abandonment items include all costs to comply with permits, regulatory agencies, etc., not included under other bid items.
- X. Removals shall be made with caution to prevent damage to hydrants, valves, etc., being removed.
- Y. At all valves being abandoned: locate the valve, close the valve, remove the valve box, backfill and restore as required.
- Z. CONTRACTOR will provide a temporary bypass for water service for all businesses, schools, and other establishments as defined by ENGINEER. No disruption in water service for these establishments will be permitted at any time during construction.

1.03 SCHEMATIC DRAWINGS

- A. The schematic drawings included on the plans are not to scale and only indicate the general arrangement of the interconnections and abandonments.
- B. In general, heavy lines indicate proposed improvements, pipe, fittings, etc. and light lines indicate existing facilities.
- C. The schematic drawings may not show all features (such as other underground utilities, etc.) which could affect the work.
- D. The CONTRACTOR shall, at his expense, verify all field conditions.
- E. Restrained mechanical joint solid sleeves or restrained flexible sleeve type couplings will be required to connect the proposed pipe to existing pipe, where applicable.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION