

DCSD WAN Fiber Improvement Project

Construction Specifications

and

Contract Documents

February 9, 2017

FOR

**Douglas County School District
1638 Mono Avenue
Minden, NV 89423**

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1.0 Defined Terms

- 1.1 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof:
- A. ARCHITECT / ENGINEER – The Architect contracted by OWNER to perform design and engineering work for OWNER.
 - B. BIDDER – The individual or entity who submits a Bid directly to OWNER.
 - C. CONTRACTOR – The individual, partnership, firm, or corporation primarily liable for the acceptable performance of the Work contracted and for payment of all legal debts pertaining to the Work who acts directly or through lawful agents or employees to complete the Work.
 - D. ISSUING OFFICE – The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
 - E. OWNER – OWNER is Douglas County School District Board of Trustees, Nevada as represented by its designee. Where the word "approval" is mentioned, approval shall mean action by the Board of Trustees or its Chief Financial Officer. The term OWNER shall also mean the contracting agency signatory to the Contract.
 - F. PROJECT MANAGER – The individual nominated by OWNER to act on behalf of OWNER for the day to day activities during the course of the Contract. However, the Project Manager has limited authority, and cannot amend or alter the Contract in any manner, nor can he amend or alter any financial obligations of OWNER.
 - G. SUCCESSFUL BIDDER – The lowest responsible BIDDER submitting a responsive Bid to whom OWNER (on the basis of OWNER's evaluation as hereinafter provided) makes an award.

2.0 Copies of Bidding Documents

- 2.1 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement or Invitation to Bid may be obtained from the Issuing Office or the Douglas County School District's website for free at:
- [http://dcsd.k12.nv.us/main.aspx?pageid=262&lastpageid=143&lastpagename=Business Services](http://dcsd.k12.nv.us/main.aspx?pageid=262&lastpageid=143&lastpagename=Business%20Services) under **Construction Bid Documents** and the heading entitled **"DCSD WAN Fiber Improvement Project."**
- 2.2 Complete sets of Bidding Documents must be used in preparing Bids; neither OWNER nor ARCHITECT / ENGINEER assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.3 OWNER and ARCHITECT / ENGINEER in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

3.0 Qualifications of Bidders

- 3.1 To demonstrate BIDDER's qualifications to perform the Work, each BIDDER must submit a completed Statement of BIDDER's Experience and Financial Qualifications on the Bid Form.

4.0 Examination of Bidding Documents, Other Related Data, and Site

4.1 Subsurface and Physical Conditions

- A. The Supplementary Conditions identify:
- i. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ARCHITECT / ENGINEER has used in preparing the Bidding Documents.
 - ii. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that ARCHITECT / ENGINEER has used in preparing the Bidding Documents.
- B. Copies of reports and drawings referenced in paragraph 4.01.A will be made available by OWNER to any BIDDER on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which BIDDER is entitled to rely as provided in **ARTICLE 28.0 SITE CONDITIONS** of the General Conditions has been identified and established. BIDDER is responsible for any interpretation or conclusion BIDDER draws from and "technical data" or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

4.2 Underground Facilities

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to OWNER and ARCHITECT / ENGINEER by owners of such Underground Facilities including OWNER, or others. OWNER and ARCHITECT / ENGINEER do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions, if any.

4.3 Hazardous Environmental Condition

- A. The Supplementary Conditions, if any, identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that ARCHITECT / ENGINEER has used in preparing the Bidding Documents.
- B. Copies of reports and drawings referenced in paragraph 4.03.A will be made available by OWNER to any BIDDER on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which BIDDER is entitled to rely as provided in **ARTICLE 30.0 HAZARDOUS ENVIRONMENTAL CONDITIONS AT SITE** of the General Conditions has been identified and established. BIDDER is responsible for any interpretation or conclusion BIDDER draws from and "technical data" or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

- 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 – if any – and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in **ARTICLES 28.0 SITE CONDITIONS and 29.0 DIFFERING SITE CONDITIONS** of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective BIDDERS with respect to a Hazardous Environmental Conditions at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in **ARTICLE 30.0 HAZARDOUS ENFIRONMENTAL CONDITIONS AT SITE** of the General Conditions.
- 4.5 On request, OWNER will provide each BIDDER access to the site to conduct such examinations, investigations, explorations, tests and studies as BIDDER deems necessary for submission of a Bid. BIDDER shall fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests and studies.
- 4.6 Reference may be made to **ARTICLE 65.0 SEPARATE CONTRACTS** of the General Conditions for the identification of the general nature of work that is to be performed at the site by OWNER or others (such as utilities and other prime contractors) that relates to the work for which a Bid is to be submitted. On request, OWNER will provide to each BIDDER for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.
- 4.7 It is the responsibility of each BIDDER before submitting a Bid to:
- A. Examine and carefully study the Bidding Documents, including any Addenda and other related data identified in the Bidding Documents;
 - B. Visit the Site to become familiar with and satisfy BIDDER as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
 - C. Become familiar with and satisfy BIDDER as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance of the Work;
 - D. Carefully study 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 may have been identified as provided in **ARTICLE 28.0 SITE CONDITIONS** of the General Conditions, and carefully study all reports and drawings of a Hazardous Environmental Condition, if any, at the Site which have been identified in **ARTICLE 30.0 HAZARDOUS ENFIRONMENTAL CONDITIONS AT SITE** of the General Conditions.
 - E. Obtain and carefully study (or assume responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by BIDDER, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;

- F. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;
 - G. Become aware of the general nature of the work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents;
 - H. Correlate the information known to BIDDER, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
 - I. Promptly give PROJECT MANAGER written notice of all conflicts, errors, ambiguities, or discrepancies that BIDDER discovers in the Bidding Documents and confirm that the written resolution thereof by ARCHITECT / ENGINEER is acceptable to BIDDER; and
 - J. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.8 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 Bidding Documents and applying the specific means, methods, techniques, sequences or procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that BIDDER has given PROJECT MANAGER written notice of all conflicts, errors, ambiguities and discrepancies that BIDDER has discovered in the Contract Documents and the written resolutions thereof by ARCHITECT / ENGINEER is acceptable to BIDDER, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

5.0 Pre-bid Conference

- 5.1 A pre-bid conference will be held on **February 17, 2017 at 10:00 am** at the project site located at **DCSD IT Office, located at the Bus Yard, on the corner of Heybourne and Airport Roads, Minden**. Representatives of OWNER and ARCHITECT / ENGINEER will be present to discuss the Project. All BIDDERS are strongly encouraged to attend the pre-bid meeting in order to be eligible to submit a bid. All major subcontractors are strongly encouraged to attend. ARCHITECT / ENGINEER will transmit to all prospective BIDDERS of record such Addenda as ARCHITECT / 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.

6.0 Site and Other Areas

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

7.0 Interpretations and Addenda

- 7.1 All questions about the meaning or intent of the Bidding Documents are to be directed to PROJECT MANAGER on the Request for Information Form. Send all such requests to PROJECT MANAGER via email using the form to be provided by PROJECT MANAGER. *No other method will be accepted.* Interpretations or clarifications considered necessary by PROJECT MANAGER in response to such questions will be issued by Addenda mailed or delivered via email to all parties recorded by PROJECT MANAGER as having received the Bidding Documents. Questions received less than three 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.
- 7.2 Addenda may also be issued to clarify, correct, or change the Bidding Documents as deemed advisable by OWNER or ARCHITECT / ENGINEER.

8.0 Bid Security

- 8.1 A Bid must be accompanied by Bid security in the form of a Bid Bond (on form attached) issued by a surety meeting the requirements of Section 3.4 Bond Requirements of the General Conditions.
- 8.2 The Bid Bond of the Successful BIDDER will be retained until such BIDDER has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid Bond will be returned. If the Successful BIDDER fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, OWNER may annul the Notice of Award and the Bid Bond of that BIDDER will be forfeited. The Bid Bond of other BIDDERS whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid Bonds furnished by such BIDDERS will be returned.
- 8.3 Bid Bonds of other BIDDERS whom OWNER believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

9.0 Contract Times

- 9.1 The number of days within which, or the dates by which, the Work is to be (a) substantially completed and (b) also completed and ready for final payment are set forth in the Agreement.
- A. Work shall be substantially complete per the seven mobilizations as conveyed in the plans_days of issuance of Notice to Proceed.
- B. Work shall be completed and ready for final payment within **30** days of issuance of Certificate of Substantial Completion.

10.0 Article 10 - Liquidated Damages

- 10.1 Provisions for liquidated damages, if any, are set forth in **ARTICLE 12.0 LIQUIDATED DAMAGES** of the General Conditions.

11.0 Substitute and "Or-Equal" Items

- 11.1 The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by CONTRACTOR if acceptable to ARCHITECT / ENGINEER, application for such acceptance will not be considered by ARCHITECT / ENGINEER until after the Effective Date of the Agreement. The procedure for submission of any such application by CONTRACTOR and consideration by ARCHITECT / ENGINEER is set forth in **ARTICLE 38.0 SUBSTITUTIONS** of the General Conditions.

12.0 Subcontractors, Suppliers and Others

- 12.1 Each BIDDER must submit a completed List of Subcontractors on the Form furnished with the completed Bid Form. The apparent Successful BIDDER, and any other BIDDER so requested, shall within seven days after the Bid opening submit to OWNER supplemental information in the form of an experience statement with the pertinent information regarding similar projects and other evidence of qualification of each Subcontractor, Supplier, person or organization if requested by OWNER or ARCHITECT / ENGINEER. IF OWNER or ARCHITECT / ENGINEER, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, OWNER may, before the Notice of Award is given request apparent Successful BIDDER to submit an acceptable substitute, in which case apparent Successful BIDDER shall submit an acceptable substitute, BIDDER's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution and OWNER may consider such price adjustment in evaluating Bids and making the contract award.
- 12.2 If apparent Successful BIDDER declines to make any such substitution, OWNER may award the Contract to the next lowest BIDDER that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid Bond of any BIDDER. Any Subcontractor, Supplier, individual, or entity so listed and against which OWNER or ARCHITECT / ENGINEER makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ARCHITECT / ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in **ARTICLE 22.0 SUBCONTRACTORS** of the General Conditions.
- 12.3 CONTRACTOR shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom CONTRACTOR has reasonable objection.

13.0 Preparation of Bid

- 13.1 The Bid Form is included with the Bidding Documents. Additional copies may be obtained from PROJECT MANAGER
- 13.2 All blanks on the Bid Form and Bid Schedule must be completed by printing in ink or by typewriter and the Bid signed. A bid price shall be indicated for each Bid item listed therein.
- 13.3 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

- 13.4 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership must be shown below the signature.
- 13.5 A bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown below the signature.
- 13.6 A Bid by an individual shall show the BIDDER's name and official address.
- 13.7 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venturer must be shown below the signature.
- 13.8 All names must be typed or printed in black ink below the signatures.
- 13.9 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.
- 13.10 The address and telephone number for communications regarding the Bid must be shown.
- 13.11 The Bid shall contain evidence of BIDDER's authority and qualification to do business in the state where the Project is located. BIDDER's state contractor license number for the state of the Project, if any, must also be shown on the Bid Form.

14.0 Basis of Bid; Evaluation of Bids

- 14.1 *Unit Price*
 - A. BIDDERS shall submit a Bid on a Lump Sum basis for each item of Work listed in the Bid Schedule.
- 14.2 The Bid price shall include such amounts as the BIDDER deems proper for Special Allowances, if any, named in the Contract Documents as provided in Section 6.2 Special Allowances of the General Conditions.

15.0 Submittal of Bid

- 15.1 Each prospective BIDDER is furnished one copy of the Bidding Documents with one separate unbound copy each of the Bid Form, and if required, the Bid Bond. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the following data:
 - A. List of Subcontractors
 - B. Construction Contractor's Qualification Statement for Construction
 - C. Non-Collusion Affidavit
- 15.2 A bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to Bid and shall be enclosed in an opaque sealed envelope plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of BIDDER, and shall be accompanied

by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "**BID ENCLOSED**." A mailed Bid shall be addressed to **Douglas County School District, 1638 Mono Avenue, Minden, NV 89423.**

16.0 Modification and Withdrawal of Bid

- 16.1 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 16.2 If, within twenty-four hours after Bids are opened any BIDDER files a duly signed written notice with OWNER and promptly thereafter demonstrates to the reasonable satisfaction of OWNER that there was a material and substantial mistake in the preparation of its Bid, *OWNER may, **in its sole discretion**, choose to not accept the Bid and return the same to BIDDER.* Thereafter, that BIDDER will be disqualified from further bidding on the Work.

17.0 Opening of Bids

- 17.1 Bids will be opened at the time and place indicated in the advertisement or invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to BIDDERS after the opening of Bids.

18.0 Bids to Remain Subject to Acceptance

- 18.1 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but OWNER may, in its sole discretion, release any Bid and return the Bid Bond prior to the end of this period.

19.0 Award of Contract

- 19.1 OWNER reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced or conditional Bids. OWNER further reserves the right to reject the Bid of any BIDDER whom it finds, after reasonable inquiry and evaluation, to be non-responsible. OWNER may also reject the Bid of any BIDDER if OWNER believes that it would not be in the best interest of the Project to make an award to that BIDDER. OWNER also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful BIDDER.
- 19.2 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any BIDDER has an interest in more than one Bid for the Work may be cause for disqualification of that BIDDER and the rejection of all Bids in which that BIDDER has an interest.
- 19.3 In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 19.4 In evaluating BIDDERS, OWNER will consider the qualifications of BIDDERS and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the General Conditions.

- 19.5 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications and financial ability of BIDDERS, proposed Subcontractors, Suppliers individuals, or entities to perform the Work in accordance with the Contract Documents.
- 19.6 If the Contract is to be awarded, OWNER will award the Contract to lowest BIDDER whose evaluation by OWNER indicates to OWNER that the award will be in the best interests of the Project. Pursuant to NRS 338.145, the OWNER will not award the contract to any BIDDER who, at the time of opening of Bids, is not licensed under the provisions of Chapter 624 of the Nevada Revised Statutes or if the contract would exceed the limit of its license. The BIDDERS attention is directed to NRS 624.230 which declares that, "any bid submitted by a person who is neither licensed nor exempted from licensure as provided in this chapter at the time the bid is submitted is void."
- 19.7 NRS 338.0117 provides for a 5 percent BIDDER preference to BIDDERS who qualify for the preference and have a Certificate of Eligibility as required by NRS 338.147. Refer to **ARTICLE 73.0 BIDDER PREFERENCE** for the requirements which must be met by a BIDDER under this statute.
- 19.8 The project requires permits prior to construction that the OWNER intends to obtain. In the event the permits are not granted the contract will not be awarded. At a minimum, these permits include:
- A. Douglas County Building Permit

20.0 Contract Security

- 20.1 **Section 3.4 Bond Requirements** of the General Conditions, as may be modified by the Supplementary Conditions, sets forth OWNER's requirements as to performance and payment Bonds and insurance. When the Successful BIDDER delivers the executed Agreement to OWNER, it must be accompanied by such Bonds.

21.0 Signing of Agreement

- 21.1 When OWNER gives a Notice of Award to the Successful BIDDER, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents which are identified in the Agreement attached thereto. Within 15 days thereafter, Successful BIDDER shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER. Within 10 days thereafter, OWNER shall deliver one fully signed counterpart to Successful BIDDER with a complete set of drawings with appropriate identification.

22.0 Retainage

- 22.1 Provisions concerning retainage and Contractors' rights to deposit securities in lieu of retainage are set forth in **ARTICLE 10.0 PROGRESS PAYMENT APPLICATIONS** in the General Conditions.

23.0 State Industrial Insurance System

- 23.1 Contractor agrees to provide proof of insurance prior to the performance of any work under this contract, and to maintain required workers compensation coverage throughout the entire term of the contract. Refer to **ARTICLE 15.0 INSURANCE** in the General Conditions.

24.0 Appeal by Bidders

- 24.1 Any BIDDER may appeal a pending bid award prior to award by OWNER. The appellant must:
- A. Submit a written protest to PROJECT MANAGER within five (5) workdays after the bid opening.
 - B. Describe, in the written protest, the issues to be addresses on appeal.
 - C. Post, with the written protest, a bond with a surety and insurance company that is authorized to do business in the State of Nevada and shall have an A.M. Best rating of A-VII or better. OWNER will hold the bond until a determination is made on the appeal.
 - D. Post the bond in the amount of 25% of the total dollar value of the appellant's bid, up to a maximum bond or other security amount of \$250,000.00.
 - E. Not seek any type of judicial intervention until OWNER has rendered its final decision on the protest.
 - F. OWNER will stay award actions until after PROJECT MANAGER has responded in writing to the protest. If the appellant is not satisfied with the response, the appellant may then protest to Douglas County School District Board of Trustees, who will render a final decision for the OWNER. No bid protests will be heard by the Board of Trustees unless BIDDER has followed the appeal process.
- 24.2 If an appeal is granted, the full amount of the posted bond or security will be returned to the appellant. If the appeal is denied or not upheld, a claim may be made against the bond for expenses suffered by the OWNER because of the unsuccessful appeal.
- 24.3 OWNER is not liable for any costs, expenses, attorney's fees, loss of income, or other damages sustained by the appellant in a bid process.

25.0 Laws and Regulations

- 25.1 Contractor shall acknowledge by submittal of this Bid that the Laws and Regulations regarding Douglas County Prevailing Wages shall be met by this Contract.
- 25.2 The following NRS Statute will be enforced for this project.
- A. NRS 338.125 Fair employment practices: Contents of contracts concerning public works; break of contract.
 - i. It is unlawful for any contractor in connection with the performance of work under a contract with a public body, when payment of the contract price, or any part of such payment, is to be made from public money, to refuse to employ or to discharge from employment any person because of his or her race, color, creed, national origin, sex, sexual orientation, gender identity or expression, or age, or to discriminate against a person with respect to hire,

tenure, advancement, compensation or other terms, conditions or privileges of employment because of his or her race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age.

- ii. Contracts between contractors and public bodies must contain the following contractual provisions:

“In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, sexual orientation, gender identity or expression, or age, including without limitation, with regard 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, without limitation, apprenticeship.”

- iii. The contractor further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.
- iv. Any violation of such provision by a contractor constitutes a material breach of contract.

BID FORM

PROJECT IDENTIFICATION: DCSD WAN Fiber Improvement Project

CONTRACT IDENTIFICATION AND NUMBER: PWP Do 2017-098

THIS BID IS SUBMITTED TO: Douglas County School District
1638 Mono Avenue
Minden, NV 89423

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

<u>Addendum No.</u>	<u>Addendum Date</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 of the Work.
- C. BIDDER is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.
- D. BIDDER has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or 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 **ARTICLE 28.0 SITE CONDITIONS of the General Conditions**, and (2) reports and drawings of a Hazardous Environmental Condition, if any, which has been identified in the Supplementary Conditions as provided in **ARTICLE 30.0 HAZARDOUS ENVIRONMENTAL CONDITIONS AT SITE of the General Conditions**.
- E. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground

Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by BIDDER, 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) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
 - G. BIDDER is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents.
 - H. BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
 - I. BIDDER has given PROJECT MANAGER written notice of all conflicts, errors, ambiguities, or discrepancies that BIDDER has discovered in the Bidding Documents, and the written resolution thereof by ARCHITECT / ENGINEER is acceptable to BIDDER.
 - J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of the Work for which this Bid is submitted.
- 4.01 BIDDER further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any individual or entity to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
- 5.01 CONTRACTOR agrees to all terms and conditions of the Nevada Revised Statutes (NRS), the Nevada Administrative Code (NAC) and local law as may apply to this Contract and to the work performed under this Contract and agrees to comply with all such applicable laws and regulations.

Changes in Laws or Regulations not known at the time of opening Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time or performance of the Work may be the subject of an adjustment in Contract Price or Contract Time. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any of any such adjustment, a Claim may be made therefore as provided in Article 13.1 Claims and Disputes of the General Conditions. These statutes include, but are not limited to:

- A. NRS 338.020 Hourly and daily rate of wages must not be less than prevailing wage in county.
- B. NRS 338.080 Exemptions
- C. NRS 338.141 Bids to include certain information concerning subcontractors and prime contractors. *(To be deemed a responsive bid, the list of subcontractors' form must be submitted even if no subcontractors are required to be listed.)*

D. NRS 338.147 Award of contract to contractor who submits best bid.

5.02 The entire set of Nevada Revised Statutes is available for review on-line at <http://leg.state.nv.us/law1.cfm>.

6.01 BIDDER will complete the Work in accordance with the Contract Documents for the following prices:

SEE ATTACHED BID SCHEDULE

7.01 BIDDER agrees that the Work will be substantially completed and completed and ready for final payment in accordance with Article 11.0 FINAL PAYMENT of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

7.02 BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.

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

- A. Bid Form;
- B. Bid Schedule;
- C. A tabulation of Subcontractors, Suppliers and other individuals and entities required to be identified in this Bid;
- D. A tabulation of Subcontractors, Suppliers and other individuals and entities required to be identified within two hours of the bid opening;
- E. Bid Bond (or Certified or Cashier's Check);
- F. Construction Contractor's Qualification Statement
- G. Non-Collusion Affidavit
- H. Affidavit of Compliance

9.01 Communications concerning this Bid shall be addressed to:
(Contractor's mailing address to be filled in by Bidder)

10.01 The terms used in this Bid with initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

SUBMITTED on _____, 20_____.

NV State Contractor License No. _____ Class _____

If BIDDER is:

An Individual

Name (typed or printed) _____
By _____ (SEAL)
(Individual's Signature)
Doing business as: _____
Business address: _____

Phone No.: _____ Fax No.: _____

A Partnership

Partnership Name _____ (SEAL)
By _____
(Signature of General Partner – attach evidence of authority to sign)
Name (typed or printed): _____
Business address: _____

Phone No.: _____ Fax No.: _____

A Corporation

Corporation Name: _____ (SEAL)
State of Incorporation: _____
Type (General Business, Professional, Service, Limited Liability): _____
By: _____
(Signature -- attach evidence of authority to sign)
Name (typed or printed): _____
Title: _____ (Corporate Seal)
Attest: _____
(Signature of Corporate Secretary)
Business Address: _____

Phone No.: _____ Fax No.: _____
Date of Qualification to do business is _____

A Joint Venture

Joint Venturer Name: _____ (SEAL)

By: _____

(Signature of joint venturer partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Business Address: _____

Phone No.: _____

Fax No.: _____

Joint Venturer Name: _____ (SEAL)

By: _____

(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Business Address: _____

Phone No.: _____

Fax No.: _____

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

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

BID SCHEDULE

DCSD WAN Fiber Improvement Project

Lump Sum Basis

Total Lump Sum Bid Price \$ _____

Total Lump Sum Bid Price (Written) _____

CHECK ONE:

- We qualify and claim the Preferential Bidder Status as specified in NRS 338.147, and have attached the Affidavit of Compliance and submitted a valid Certificate of Eligibility in accordance with the requirements of NRS 338.147 as referenced in Article 73.0 Bidder Preference General Condition.

- We do not qualify for the Preferential Bidder Status as specified in NRS 338.147.

LIST OF SUBCONTRACTORS
(to be submitted with bid)

The name and address of each subcontractor who will be paid at least 5 percent of the prime contractor's total bid shall be listed below. To be deemed a responsive bid, this form must be submitted even if no subcontractors are required to be listed. In that case, the bidder should state "None" (or similar language stating that no subcontractors need to be listed) in the space below. (Refer to NRS 338.141). Contractor shall list themselves for all work to be self performed.

<u>Name</u>	<u>Address of Subcontractor</u>	<u>Portion of Work</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

LIST OF SUBCONTRACTORS
(to be submitted after bid opening)

Within two hours after the completion of the opening of the bids, the General Contractors who submitted the three lowest bids must provide a list of each subcontractor who will provide labor or a portion of the work or improvement to the contractor for which the subcontractor will be paid an amount exceeding one percent of the prime contractor's bid or \$50,000, whichever is greater, and the number of the license issued to the subcontractor, pursuant to NRS chapter 624. **If a General Contractor fails to submit such a list within the required time, his bid shall be deemed not responsive.** To be deemed a responsive bid, this form must be submitted even if no subcontractors are required to be listed. In that case, the bidder should state "None" (or similar language stating that no subcontractors need to be listed) in the space below. (Refer to NRS 338)

<u>Subcontractor/Address/Nevada License No.</u>	<u>Dollar Value and description of work</u>

5% BID BOND

BIDDER (Name and Address):

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

OWNER (Name and Address):

BID

BID DUE DATE: _____

PROJECT (Brief Description Including Location):

BOND

BOND NUMBER: _____

DATE: (Not later than Bid Due Date): _____

PENAL SUM: _____

(Words)

(Figures)

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

BIDDER

SURETY

_____(Seal)
Bidder's Name and Corporate Seal

_____(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

Attest: _____
Signature and Title

Note: (1) Above addresses are to be used for giving required notice.
(2) Any singular reference to Bidder, Surety, OWNER or other party shall be considered plural where applicable.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to OWNER upon default of Bidder the penal sum set forth on the face of this Bond.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents and Contract Documents.
3. This obligation shall be null and void if:
 - 3.1. OWNER accepts Bidder's bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents and Contract Documents, or
 - 3.2. All bids are rejected by OWNER, or
 - 3.3. OWNER fails to issue a notice of award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).
4. Payment under this bond will be due and payable upon default by Bidder and Within 30 calendar days after receipt by Bidder and Surety of written notice of default from OWNER, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue notice of award agreed to in writing by OWNER and Bidder, provided that the time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid Due Date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety, and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notice required hereunder shall be in writing and sent to Bidder and Surety at their respective

addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of the Bond conflicts with any applicable provision of any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer or proposal as applicable.

**CONSTRUCTION CONTRACTOR'S
QUALIFICATION STATEMENT
FOR CONSTRUCTION**

Submitted by:

Name of Organization _____

Name of Individual _____

Title _____

Address _____

Telephone _____

Submitted to:

Name _____

Address _____

Telephone _____

Project Name and Description (if applicable)

Contractor' General Business Information

Check If:

- Corporation Partnership Joint Venture Sole Proprietorship

If Corporation:

a. Date and State of Incorporation

b. List of Executive Officers

Name

Title

If Partnership:

a. Date and State of Organization

b. Names of Current General Partners

c. Type of Partnership

- General Publicly Traded
 Limited Other (describe): _____

If Joint Venture:

a. Date and State of Organization

b. Name, Address and Form of Organization of Joint Venture Partners: (Indicate managing partner by an asterisk *)

1. On Schedule A, attached, list major engineered construction projects completed by this organization in the past five (5) years. (If joint venture, list each participant's projects separately).

2. On Schedule B, attached, list current projects under construction by this organization, (If joint venture, list each participant's projects separately).

3. On Schedule C, attached, provide details of the construction experience of the principal individuals of your organization directly involved in construction operations.

4. Does your organization possess a valid State of Nevada contractor's license of a class corresponding to the work to be performed?

Yes No

If yes, list the license number(s) and classification(s).

5. List the licensed categories of work that your company normally performs with its own workforce.

6. If required, can your organization provide a bid bond for this project? Yes No

7. What is your approximate total bonding capacity?

- \$500,000 to \$2,000,000
 \$2,000,000 to \$5,000,000
 \$5,000,000 to \$10,000,000
 \$10,000,000 or more

8. Name of surety company and name, address, and phone number of agent.

9. Does your organization have the ability to obtain and maintain insurance coverage for public liability and property damage, and all other insurance as specified and for the limits required in the contract documents?

Yes No

10. Is your organization a member of a controlled group of corporations as defined in I.R.C. Sec. 1563?

Yes No

If yes, show names and addresses of affiliated companies.

11. Has your organization ever failed to complete any construction contract awarded to it?

Yes No

If yes, describe circumstances and provide details on attachment.

12. Has any Corporate officer, partner, joint venture participant or proprietor ever failed to complete a construction contract awarded to him or her in their own name or when acting as a principal of another organization?

Yes No

If yes, describe circumstances and provide details on attachment.

13. In the last five years, has your organization ever failed to substantially complete a project in a timely manner?

Yes No

If yes, describe circumstances and provide details on attachment.

14. Does your organization now have any legal suits or arbitration claims pending or outstanding against it or any officers?

Yes No

If yes, describe circumstances and provide details on attachment.

15. Has your organization had a contract partially or completely terminated for default (cause) within the past five years?

Yes No

If yes, describe circumstances and provide details on attachment.

16. Has your organization been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.13895?

Yes No

If yes, describe circumstances and provide details on attachment.

17. Has your organization been convicted of a violation for discrimination in employment during the 2 years immediately preceding the date of application?

Yes No

If yes, describe circumstances and provide details on attachment.

18. Has your organization been disciplined or fined by the State of Nevada Contractor's Board or another state or federal agency for conduct that relates to the ability to perform the work required for this project?

Yes No

If yes, describe circumstances and provide details on attachment.

19. Does your organization have a safety program that complies with the requirements of NRS Chapter 618?

Yes No

20. Describe the permanent safety program you maintain within your organization. Use attachment if necessary.

21. During the 5 years immediately preceding the date of this bid, has your organization filed as a debtor under the provisions of the United States Bankruptcy Code?

Yes No

If yes, describe circumstances and provide details on attachment.

22. During the 5 years immediately preceding the date of this bid, has your organization, as a result of causes within the control of your organization or a subcontractor or supplier of your organization, failed to perform any contract:

(a) In the manner specified by the contract and any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative?

Yes No

If yes, describe circumstances and provide details on attachment.

(b) Within the time specified by the contract unless extended by the person or governmental entity that awarded the contract or its authorized representative?

Yes No

If yes, describe circumstances and provide details on attachment.

(c) For the amount of money specified in the contract or as modified by any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative?

Yes No

If yes, describe circumstances and provide details on attachment.

23. Furnish the following information with respect to an accredited banking institution familiar with your organization.

Name of Bank _____

Address _____

Account Manager _____

Telephone _____

I hereby certify that the information submitted herewith, including any attachment is true to the best of my knowledge and belief.

By: _____

Title: _____

Dated: _____

Schedule A – List of Construction Projects Completed in the Past Five (5) Years

<u>Name, Location and Description of Project</u>	<u>Owner</u>	<u>Design Engineer</u>	<u>Date Completed</u>	<u>Contract Price</u>	<u>Reference/Contact & Address & Phone</u>
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Schedule B – List of Current Projects Under Construction

<u>Name, Location and Description of Project</u>	<u>Owner</u>	<u>Design Engineer</u>	<u>Contract Price</u>	<u>Amount Completed</u>	<u>Date of Scheduled Completion</u>	<u>Reference/Contact & Address & Phone</u>
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Schedule C - Construction Experience of Principal Individuals Involved in Construction Operations

Name	Position	Date started with this organization	Date started in construction	Prior positions and experience in construction
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This Affidavit to be Fully Executed

NON-COLLUSION AFFIDAVIT

STATE OF) _____
)ss.
COUNTY OF) _____

_____, affiant,

the _____
(President, Secretary, Manager, Owner, or Representative of)

Name of Company or Corporation or Owner

the person, corporation, or company who makes the accompanying Bid, having first been duly sworn, deposes and says:

That such Bid is genuine, and not sham or collusive, nor made in the interest or behalf of any person not herein named, and that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a sham bid, or any other person, firm, or corporation to refrain from bidding, and that the Bidder has not in any manner sought by collusion to secure for itself an advantage over any other Bidder.

Signature of: President, Secretary
Manager, Owner, or Representative

Subscribed and sworn to before me

this ____ day of _____, 2017.

Signature of Notary Public in and
for the County of _____

State of _____

This Affidavit to be Fully Executed

AFFIDAVIT OF COMPLIANCE

Affiant, _____ being first duly sworn, deposes and states upon personal knowledge and
(Name)
under penalty of perjury as follows:

1. I am the _____ of the _____ and have held that position since
(Title) (Company Name)
_____. I have the authority to make the representations contained herein on
(Year)
behalf of _____.
(Company Name)
2. I have personal knowledge of the matters set forth herein and if called upon to testify could and would competently testify consistent with the matters set forth in this Affidavit.
3. In connection with the bid for _____ (District Project) I certify on behalf
(Project Name/PWP Number)
of _____ that for the duration of this District Project:
(Company Name)
 - a. At least 50% of all workers employed on this District Project by _____ ,
(Company Name)
including any workers employed by any subcontractor engaged on this District Project, will hold a valid driver's license or identification card issued by the Nevada Department of Motor Vehicles; and,
 - b. All vehicles used primarily for this District Project will be registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to Nevada Revised Statutes Section 706.826; or will be registered in the State of Nevada; and,
 - c. At least 50% of the design professionals working on this District Project, employed by _____ and any design professionals employed by any subcontractor
(Company Name)
engaged on this District Project, will have a valid driver's license or identification card issued by the Nevada Department of Motor Vehicles; and,
 - d. At least 25% of the materials suppliers used for this project must be physically located in Northern Nevada.
 - e. _____ as well as any subcontractor engaged on this District Project will
(Company Name)
maintain and make available for inspection within this State our records concerning payroll relating to this District Project.

Per NRS 338.147, a valid Certificate of Eligibility issued by the State Contractors' Board (NRS 338.0017) shall be attached to the bid at the time of submittal, and this Affidavit of Compliance must be filed within two (2) hours of bid opening in order to receive preference in bidding.

Further Affiant Saith Naught.

Dated this _____ day of _____, 20__ ,

Signature

Title

(Print)

ACKNOWLEDGMENT

State of _____

County of _____

Subscribed and sworn to before me this

_____ day of _____, 20__

My Commission Expires _____.

Signature

(Notary Seal)

AGREEMENT
BETWEEN
DOUGLAS COUNTY SCHOOL DISTRICT,
AND
XXX

ON THE BASIS OF A STIPULATED PRICE

Whereas, **Douglas County School District** (hereinafter "OWNER") is a political subdivision of the State of Nevada, and is statutorily authorized to enter into contracts for construction projects, and;

Whereas **XXX** (hereinafter "CONTRACTOR") is a construction company licensed as a general contractor in Nevada, and;

Whereas CONTRACTOR has submitted a bid in accord with the **DCSD WAN Fiber Improvements Project** Construction Specifications and Contract Documents (hereinafter "CONTRACT DOCUMENTS") as prepared by OWNER; and

Whereas, CONTRACTOR submitted a responsive and responsible Bid in the amount of:

\$ 000,000.00 for **DCSD WAN Fiber Improvements Project** Construction Project as outlined in the CONTRACT DOCUMENTS. The Bid is for furnishing of all materials and all labor, tools, and appliances and all expense, direct or indirect, connected with the proper execution of the Work and of maintaining the same until it is accepted by OWNER. Therefore, OWNER will pay and CONTRACTOR shall accept as full compensation therefore the above total, not to exceed sum.

Now therefore, it is the intention of OWNER and CONTRACTOR to enter into a Contract to have CONTRACTOR complete all of the work as specified or indicated in the CONTRACT DOCUMENTS.

ARTICLE 1 – WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the CONTRACT DOCUMENTS. The term "Work" includes all labor, materials, services, equipment, tools, transportation, power, water, permanent and temporary utilities, connections, provisions for safety, and all incidental and other things necessary to produce the finished construction of the Project as described by the CONTRACT DOCUMENTS. CONTRACTOR agrees to provide all labor, materials, equipment, tools and services necessary, and to do everything required by the CONTRACT DOCUMENTS as necessary to complete all Work required for the Project within the time specified for Substantial Completion of the Work. The Work is generally described as follows:

Trench, conduit, place and terminate fiber optics cabling

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the CONTRACT DOCUMENTS may be the whole or only a part is generally described as follows:

DCSD WAN Fiber Improvements Project

ARTICLE 3 – ARCHITECT / ENGINEER

The Project has been designed by: **Douglas County School District**
1638 Mono Avenue
Minden, NV 89423

3.01

Who is hereinafter called ARCHITECT and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ARCHITECT in the CONTRACT DOCUMENTS in connection with completion of the Work in accordance with the CONTRACT DOCUMENTS.

The Project will be administered by:

Scott McCullough, Project Manager
Douglas County
1594 Esmeralda Avenue
Minden, NV 89423

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. Time is of the essence, and CONTRACTOR acknowledges that the time for completion of the Work is sufficient for it to perform all the Work. In case of failure on the part of CONTRACTOR to complete the Work or any separable part thereof within the time(s) specified in the CONTRACT DOCUMENTS or within such additional time(s) as may be granted by formal action of the Douglas County School District Board of Trustees, OWNER reserved the right to require CONTRACTOR pay to OWNER, as liquidated damages, the sum(s) indicated in **ARTICLE 12.0 LIQUIDATED DAMAGES** of the General Conditions. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the CONTRACT DOCUMENTS are of the essence of this Contract.

4.02 *Dates for Substantial Completion*

A. The Work and all requirements of the CONTRACT DOCUMENTS will be substantially completed within the prescribed mobilization as in the plans.

4.03 *Final Payment*

A. As provided in **ARTICLE 11.0 FINAL PAYMENT** of the General Conditions, when the Work and all requirements of the CONTRACT DOCUMENTS are fully and satisfactorily completed, the OWNER will pay to CONTRACTOR a final payment consisting of the remaining unpaid balance of the Contract Sum due CONTRACTOR. The acceptance of the final payment by the CONTRACTOR shall constitute a full and final release and waiver of all CONTRACTOR claims and rights of claim against the OWNER relating or pertaining to the Work.

Acceptance of the final payment by the CONTRACTOR shall terminate the OWNER-CONTRACTOR Construction Agreement after which time the applicable terms and conditions for Warranties and Insurance shall continue to apply.

4.04 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding

the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER **five-hundred dollars (\$500)** for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 4.02 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER **two hundred and fifty dollars (\$250)** for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

- B. In the event that CONTRACTOR fails to pay OWNER the specified liquidated damages amount within thirty (30) days of CONTRACTOR's being notified of said damages, OWNER may deduct the amount of the assessed liquidated damages from the final payment or retention withheld pursuant to **ARTICLE 11.0 FINAL PAYMENT** of the General Conditions.

ARTICLE 5 – CONTRACT PRICE

- 5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the CONTRACT DOCUMENTS an amount in current funds equal to the sum of the amounts determined below:
 - A. For all Unit Price Work, an amount equal to the stipulated sum of the established Unit Price for each separately identified item of Unit Price Work times the estimated quantity of that item, as indicated in the attached Bid Schedule;
 - B. As provided in **ARTICLE 7.0 UNIT PRICE WORK** of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ARCHITECT.

ARTICLE 6 – PAYMENT PROCEDURES

- 6.01 CONTRACTOR shall submit Applications for Payment in accordance with **ARTICLE 10.0 PROGRESS PAYMENT APPLICATIONS** of the General Conditions. Applications for Payment will be processed by ARCHITECT and OWNER as provided in **ARTICLE 10.0 PROGRESS PAYMENT APPLICATIONS** General Conditions.

ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in **ARTICLE 10.0 PROGRESS PAYMENT APPLICATIONS** of the General Conditions shall bear interest at the rate that was in place at the time of the execution of the project. The interest rate shall be determined by the interest rate paid by Bank of America, Minden branch on a certificate of deposit time deposit.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce OWNER to enter into this Contract, CONTRACTOR makes the following representations:
 - A. CONTRACTOR has examined and carefully studied the CONTRACT DOCUMENTS and the other related data identified in the Bidding Documents.
 - B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

- C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. CONTRACTOR has carefully studied all: (1) Reports of explorations and tests of subsurface conditions 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 (with the exception of Underground Facilities) which have been identified in the Bidding Documents and Specifications and (2) reports and drawings of Hazardous Environmental Condition, if any, at the Site which has been identified in the Bidding Documents and Specifications.
- E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress or performance of the Work or which relate to any aspect of the means, methods or techniques or procedures of construction engaged by CONTRACTOR, including applying precise means, methods and techniques or procedures of construction, if any, expressly required by the CONTRACT DOCUMENTS to be employed by CONTRATOR, and safety precautions and programs incident thereto.
- F. CONTRACTOR acknowledges that OWNER and ARCHITECT 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.
- G. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction, if any, expressly required by the CONTRACT DOCUMENTS to be employed by CONTRACTOR, and safety precautions and programs incident thereto.
- H. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the CONTRACT DOCUMENTS.
- I. 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.
- J. 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.
- K. CONTRACTOR has given OWNER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the CONTRACT DOCUMENTS, and the written resolution thereof by ARCHITECT is acceptable to CONTRACTOR.
- L. The CONTRACT DOCUMENTS are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The CONTRACT DOCUMENTS consist of the following:
1. This Contract Agreement (pages 1 to 11, inclusive);
 2. Performance Bond (pages ____ to ____, and attachments inclusive);
 3. Payment Bonds (pages _____ to ____, and attachments inclusive);
 4. General Conditions (pages 1 to 60, inclusive, attached and incorporated);
 5. Supplementary Conditions: Not Applicable
 6. Addenda (numbers X, inclusive);
 7. CONTRACTOR's Bid (pages 1 to 8, inclusive, attached and incorporated);
 8. Notice to Proceed (pages _____ to ____ inclusive attached and incorporated).
 9. In addition, the following items, which are not exhibits to this Contract, are incorporated by reference and shall constitute part of the CONTRACT DOCUMENTS:
 - a. Contract Drawings consisting of a cover sheet and sheets numbered H 1.11 and H 1.12, inclusive with each sheet bearing the following general title **DCSD WAN Fiber Improvements Project**
 - b. Construction Schedule submitted pursuant to **ARTICLE 18.0 PROGRESS PAYMENT APPLICATIONS** of the General Conditions, and any amendments approved by OWNER;
 - c. Current Prevailing Wage Rates, Douglas County, Nevada.
 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Written Amendments
 - b. Work Change Directives
 - c. Change Order(s)
- B. The documents listed in 09.01.A are attached to this Contract, except as expressly noted otherwise above.
- C. There are no CONTRACT DOCUMENTS other than those listed above in **ARTICLE 9**.
- D. This Contract embodies the entire agreement between OWNER and CONTRACTOR and supersedes all other writings, oral agreements, or representations. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of the CONTRACT DOCUMENTS shall be valid unless reduced to writing and signed by both parties.
- E. The Bidding and CONTRACT DOCUMENTS include various divisions, sections and conditions, which are essential parts for the Work to be provided by the successful Bidder. A requirement occurring in one is as binding as though occurring in all. They

are intended to be complementary and to describe and provide for a complete Work. In case of discrepancy, the following precedence will govern:

- Contract Agreement
- Performance Bonds
- Payment Bonds
- General Conditions
- Special Conditions
- Addenda
- Construction Specifications
- CONTRACTOR's Bid
- List of Drawings
- Contract Drawings
- Construction Schedule submitted pursuant to **ARTICLE 18.0 CONSTRUCTION SCHEDULE AND DATA** of the General Conditions, and any amendments approved by OWNER
- Current Prevailing Wage Rates, Douglas County, Nevada

Addenda, Change Orders and Supplemental Agreements will take precedence over any of the above. Detailed plans shall have precedence over general plans.

CONTRACTOR shall take no advantage of any apparent error or omission in the Bidding Documents. In the event CONTRACTOR discovers such an error or omission, CONTRACTOR shall immediately notify OWNER. OWNER will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Bidding Documents.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this will have the meanings indicated in the General Conditions.

10.02. *Rights and Remedies*

- A. The duties and obligations imposed by the CONTRACT DOCUMENTS and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law..

10.03 *Assignment of Contract*

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

10.04 *Successors and Assigns*

- A. OWNER and CONTRACTOR each binds themselves, their partners, successors, assignees and legal representatives to the other party hereto and to the partners, successors, assignees and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the CONTRACT DOCUMENTS.

No party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other parties for which approval may

be withheld for any reason or for no reason whatsoever. CONTRACTOR shall not assign, transfer, convey or otherwise dispose of the CONTRACT DOCUMENTS or its right, title or interest in or to the same or any part thereof, without prior consent of OWNER and concurred to by the sureties.

10.05 *Severability*

- A. Any provision or part of the CONTRACT DOCUMENTS held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the CONTRACT DOCUMENTS shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.06 *Legal*

- A. This Contract shall be administered and interpreted under the laws of the State of Nevada. This Contract shall not be construed for or against any party by reason of who drafted the provisions set forth herein. Any action at law, suit in equity or judicial proceeding for the enforcement of this Contract or any of the CONTRACT DOCUMENTS must be litigated in the Ninth Judicial District Court of Nevada.
- B. The CONTRACT DOCUMENTS and the various provisions thereof are severable. Should any part, clause, provisions or terms be declared invalid, ineffective, or unenforceable, the remaining provisions of the CONTRACT DOCUMENTS shall remain in full legal force and effect.

10.07 *Notices*

- A. All notices, documents and or payments regarding this Contract and Contract shall be sent to the following:

OWNER REPRESENTATIVE

CONTRACTOR

Douglas County
Attn: Scott McCullough, Project Manager
1594 Esmeralda Avenue

Minden, NV 89423

10.08 *Effective Date of the Contract*

- A. Both OWNER and CONTRACTOR agree that this Contract as outlined in the CONTRACT DOCUMENTS become effective immediately upon the signing of this Contract by both parties. CONTRACTOR shall commence the Work to be performed under this Contract on the date set by OWNER in the written Notice to Proceed, continuing the Work with diligence and shall complete the entire Work in accordance with **ARTICLE 18.0 CONSTRUCTION SCHEDULE AND DATA** of the **General Conditions**. Further, in the event interim milestone completion dates are established in **ARTICLE 18.0 CONSTRUCTION SCHEDULE AND DATA** of the **General Conditions** for separable portions of the Work, CONTRACTOR agrees to complete said separable portions of the Work in accordance with said milestone dates.

10.09 *Cancellation of the Contract*

- A. OWNER reserves the right to cancel the Contract awarded for any reason with seven (7) days written notice to CONTRACTOR. OWNER will be responsible to pay CONTRACTOR for Work completed up to this point, or for Work performed in conjunction with this Contract.

10.10 *Agreement Modification*

- A. This Contract embodies the entire agreement between OWNER and CONTRACTOR and supersedes all other writings, oral agreements, or representations. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of the CONTRACT DOCUMENTS shall be valid unless reduced to writing and signed by both parties.

ARTICLE 11 – INDEMNIFICATION

- 11.01 To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify, and hold harmless OWNER, and its agents, employees, and members of the Board of Trustees from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from performance of this Contract, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property caused by the negligent acts or omissions of CONTRACTOR, a Subcontractor, anyone directly or indirectly employed by them for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in part by OWNER indemnified hereunder. However, in no event shall CONTRACTOR be required to indemnify OWNER for claims, damages, loss or expenses arising out of OWNER's sole negligence. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article.

In any and all claims against OWNER, its agents, employees, or any of the members of the Board of Trustees by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under the first paragraph of this Article 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 subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

CONTRACTOR's obligations of this Article shall not extend to the liability of the Architect or its employees arising out of (a) the preparation or approval of maps, sketches, opinions, reports, surveys, CCOs, designs, or specifications, or (b) the giving of or the failure to give directions or instructions by the Architect or its employees provided such giving or failure to give is the primary cause of injury or damage.

ARTICLE 12 – PATENT INDEMNITY

- 12.01 CONTRACTOR hereby indemnifies and shall defend and hold harmless OWNER and its agents, employees, and members of the Board of Trustees respectively from and against all claims, losses, costs, damages, and expenses, including attorney's fees, incurred by OWNER and its agents, employees, and members of the Board of Trustees respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under the CONTRACT DOCUMENTS by CONTRACTOR, or out of the processes or actions employed by, or on behalf of CONTRACTOR in connection with the performance of the CONTRACT DOCUMENTS. CONTRACTOR shall, at its sole expense, promptly defend against any such claim or action unless directed otherwise by OWNER or its representatives provided that OWNER or its representatives shall have notified CONTRACTOR upon becoming aware of such claims or actions, and provided further that CONTRACTOR's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by OWNER or and its agents, employees, and members of the Board of Trustees.

CONTRACTOR shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, material or processes, provided that such substituted

and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of this Contract.

ARTICLE 13 – INDEPENDENT CONTRACTOR

13.01 The parties agree that CONTRACTOR is an independent contractor and that this Contract is entered into in accordance with Nevada law that CONTRACTOR is not an employee of OWNER, and that there shall be no:

1. Withholding of income taxes by OWNER;
2. Industrial insurance coverage provided by OWNER;
3. Participation in group insurance plans which may be available to employees of OWNER;
4. Participation or contribution by either the independent contractor or OWNER to the Public Employees Retirement System;
5. Accumulation of vacation leave or sick leave;
6. Unemployment compensation coverage provided by OWNER.

CONTRACTOR represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organized and financed to perform such work. CONTRACTOR shall act as an independent contractor and not as the agent of OWNER in performing the Contract and is responsible for maintaining complete control over its employees and all of its suppliers and Subcontractors. Nothing contained in this Contract or any Subcontract awarded by CONTRACTOR shall create any contractual relationship between any such supplier or Subcontractor and OWNER. However, each subcontract and supplier agreement entered into by CONTRACTOR, relative to the CONTRACT DOCUMENTS, shall bind such Subcontractor or supplier to the same terms and conditions as appear in the CONTRACT DOCUMENTS. CONTRACTOR shall perform all work in accordance with its own methods subject to strict compliance with the CONTRACT DOCUMENTS.

ARTICLE 14 – FAIR EMPLOYMENT PRACTICES

14.01 In connection with the performance of work under this Contract, CONTRACTOR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin or ancestry, sex, sexual orientation, gender identity or expression, religion, disability, or age. Such agreement 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 further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. Any violation of such provision by CONTRACTOR shall constitute a material breach of this Contract.

ARTICLE 15 – INSURANCE REQUIREMENTS

15.01 Certificates of insurance evidencing the required coverage, as stipulated in the General Conditions of the CONTRACT DOCUMENTS, shall be filed with OWNER prior to CONTRACTOR mobilizing onto the Project site and prior to commencement of any work on the Project.

ARTICLE 16 – BONDS AND GUARANTY

16.01 CONTRACTOR shall furnish a performance bond, payment bond and guarantee bond in the form attached hereto and in accordance with the requirements set forth in Article 3.4 Bond Requirements of the General Conditions.

ARTICLE 17 – STATUTORY REQUIREMENTS

- 17.01 CONTRACTOR agrees to all terms and conditions of the Nevada Revised Statutes (NRS), the Nevada Administrative Code (NAC) and local law as may apply to this Contract and to the work performed under this Contract and agrees to comply with all such applicable laws and regulations.

Changes in Laws or Regulations not known at the time of opening Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time or performance of the Work may be the subject of an adjustment in Contract Price or Contract Time. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any of any such adjustment, a Claim may be made therefore as provided in Article 13.1 Claims and Disputes of the General Conditions.

ARTICLE 18 – INFORMATION ACCESS

- 18.01 The books, records, documents, and accounting procedures and practices of CONTRACTOR relevant to this Contract shall be subject to inspection, examination and audit by OWNER, its agents and representatives, and the State of Nevada during the course of this project and for 3 years after its completion.

ARTICLE 19 – EXAMINATION OF DOCUMENTS

- 19.01 Execution of this Contract by each party shall constitute the representation by each such party that it has examined the contents of all the CONTRACT DOCUMENTS, including, but not limited to, General Conditions of the CONTRACT DOCUMENTS, that it has read and understands the same, and specifically agrees to be bound thereby.

SIGNATURE PAGE FOLLOWS

REST OF PAGE LEFT BLANK

IN WITNESS WHEREOF, OWNER and CONTRACTOR have caused this Contract for the **DCSD WAN Fiber Improvements Project** to be executed and intend to be bound by the provisions of this Contract as well as the Contract set forth in the CONTRACT DOCUMENTS.

CONTRACTOR: _____

By: _____

Printed Name: _____

Title: _____

Date: This _____ day of _____, 2017.

OWNER: DOUGLAS COUNTY SCHOOL DISTRICT

By: _____
Teresa White, Superintendent

Date: This _____ day of _____, 2017.

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 Address of 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:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the following two pages, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

Space provided below for signatures of additional parties, if required)

CONTRACTOR AS PRINCIPAL

Company: _____ Corp. Seal)

Signature: _____

—

Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:
(Attach Power of Attorney)

SURETY

Company: _____ (Corp. Seal)

Signature: _____

—

Name and Title:

(Attach Power of Attorney)

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:
 - 3.3.1 The Surety in accordance with the terms of the Contract;
 - 3.3.2 Another contractor selected pursuant to paragraph 4.3 to perform the Contract.
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:
 - 4.4.1. 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
 - 4.4.2. 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 paragraph 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 paragraph 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.

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 Address of 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:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the following two pages, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:

Space provided below for signatures of additional parties, if required)

CONTRACTOR AS PRINCIPAL

Company: _____ Corp. Seal)

Signature: _____

—

Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title:
(Attach Power of Attorney)

SURETY

Company: _____ (Corp. Seal)

Signature: _____

—

Name and Title:

(Attach Power of Attorney)

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:
 - 4.2.1. 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
 - 4.2.2. 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

4.2.3. 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 paragraph 4.1 or paragraph 4.2.3, 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 the 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 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.

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.
Refer to Supplementary Condition SC-1.01

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all

governmental bodies, agencies, authorities, and courts having jurisdiction.

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

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

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

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

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

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

32. *PCB's*--Polychlorinated biphenyls.

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

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

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project

Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

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

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

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

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

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

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

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

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

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

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

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

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

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

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

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally

dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms “as allows,” “as approved,” or terms of like effect or import are used, or the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

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

C. Defective

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

D. Furnish, Install, Perform, Provide

1. The work “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 work “install,” 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.

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

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

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

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds

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

2.02 Copies of Documents

A. ~~OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents.~~ Additional copies will be furnished upon request at the cost of reproduction. **Refer to Supplementary Condition SC-2.02**

2.03 Commencement of Contract Times; Notice to Proceed

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

the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 Starting the Work

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

2.05 Before Starting Construction

A. CONTRACTOR's *Review of Contract Documents*: Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

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

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. A preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

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

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

2.06 Preconstruction Conference

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

2.07 Initial Acceptance of Schedules

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

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

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

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

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

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

3.02 Reference Standards

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

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

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's

Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Document.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof. **Refer to Supplementary Condition SC-3.03**

B. Resolving Discrepancies

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

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

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

3.04 Amending and Supplementing Contract Documents

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

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

3.05 Reuse of Documents

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

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

4.01 Availability of Lands

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

make a Claim therefor as provided in paragraph 10.05.

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

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. **Refer to Supplementary Condition SC-4.01**

4.02 Subsurface and Physical Conditions

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

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

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

1. The completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. Any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information. **Refer to Supplementary Condition SC-4.02**

4.03 Differing Subsurface or Physical Conditions

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

1. Is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. Is of such a nature as to require a change in the Contract Documents; or

3. Differs materially from that shown or indicated in the Contract Documents; or

4. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or

physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

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

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

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

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

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

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

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

4.04 Underground Facilities

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

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

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

a. Reviewing and checking all such information and data,

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

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

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

B. Not Shown or Indicated

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

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change

Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05. **Refer to Supplementary Condition SC-4.04**

4.05 Reference Points

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel. **Refer to Supplementary Condition SC-4.05**

4.06 Hazardous Environmental Condition at Site

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

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely

upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. The completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or

2. Other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. Any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

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

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and

CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

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

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all

court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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

ARTICLE 5 - BONDS AND INSURANCE

~~5.01 Performance, Payment, and Other Bonds~~

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

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

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

5.02 Licenses Sureties and Insurers

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions. **Refer to Supplementary Condition SC-5.02**

5.03 Certificates of Insurance

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

5.04 CONTRACTOR's Liability Insurance

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

1. Claims under worker's compensation, disability benefits, and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

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

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

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

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

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

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

~~2. Include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater; **Refer to Supplementary Condition SC-5.04.B.2**~~

3. Include completed operations insurance;

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

5. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and

CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

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

7. With respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter). **Refer to Supplementary Condition SC-5.04.C**

5.05 OWNER's Liability Insurance

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

5.06 Property Insurance

A. **Refer to Supplementary Condition SC-5.06.A**
~~Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:~~

~~1. Include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an~~

~~insurable interest and shall be listed as an additional insured;~~

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

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

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

~~5. Allow for partial utilization of the Work by OWNER;~~

~~6. Include testing and startup; and~~

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

~~B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEERS, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.~~
Refer to Supplementary Condition SC-5.06.B

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

~~afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07. **Refer to Supplementary Condition SC-5.06.C**~~

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

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

5.07 Waiver of Rights

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

~~other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued. Refer to Supplementary Condition SC-5.07.A~~

B. OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and

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

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

5.08 Receipt and Application of Insurance Proceeds

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

~~B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties. Refer to Supplementary Condition SC-5.08.B~~

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior

to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence

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

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

act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 Labor; Working Hours

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

6.03 Services, Materials, and Equipment

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

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

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

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

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

6.05 Substitutes and "Or-Equals"

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

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

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

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

2. Substitute Items

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

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

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

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the

proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

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

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

E. ENGINEER's Cost Reimbursement: ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the

provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

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

6.06 Concerning Subcontractors, Suppliers, and Others

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

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

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just

as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

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

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

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

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

forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 Patent Fees and Royalties

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

6.08 Permits

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

6.09 *Laws and Regulations*

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

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

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.
Refer to Supplementary Condition SC-6.09

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

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

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction

equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

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

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

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

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by Owner. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 Record Documents

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER. **Refer to Supplementary Condition SC-6.12.B**

6.13 Safety and Protection

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

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

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed

by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER'S Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion). **Refer to Supplementary Condition SC-6.13**

6.14 Safety Representative

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

6.15 Hazard Communication Programs

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

6.16 Emergencies

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

response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Shop drawings and Samples

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

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

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. Submittal Procedures

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

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

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

c. All information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

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

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

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

E. ENGINEER's Review

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

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

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

requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. Resubmittal Procedures

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

6.18 Continuing The Work

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

6.19 CONTRACTOR's General Warranty and Guarantee

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
2. Normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in

accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. Observations by ENGINEER;
2. Recommendation by ENGINEER or payment by OWNER OF ANY PROGRESS OR FINAL PAYMENT;
3. The issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereof by OWNER;
4. Use or occupancy of the Work or any part thereof by OWNER;
5. Any acceptance by OWNER or any failure to do so;
6. Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;
7. Any inspection, test, or approval by others;
or
8. Any correction of defective Work by OWNER.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. Is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and
2. Is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them

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

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

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

1. The preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

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

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

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

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

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

7.02 *Coordination*

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

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

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

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

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

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 Communications to Contractor

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

8.02 Replacement of ENGINEER

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

8.03 Furnish Data

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

8.04 Pay Promptly When Due

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

8.05 Lands and Easements; Reports and Tests

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's

identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 Insurance

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

8.07 Change Orders

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

8.08 Inspections, Tests, and Approvals

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

8.09 Limitations on OWNER's Responsibilities

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

8.10 Undisclosed Hazardous Environmental Condition

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

8.11 Evidence of Financial Arrangements

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

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 OWNER's Representative

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 Visits to Site

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

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques,

sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

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

9.04 Clarifications and Interpretations

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

9.05 Authorized Variations in Work

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

or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 Rejecting Defective Work

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

9.07 Shop Drawings, Change Orders and Payments

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

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

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

9.08 Determinations for Unit Price Work

~~A. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.~~ Refer to **Supplementary Condition SC-9.08.A**

9.09 Decisions on Requirements of Contract Documents and Acceptability of Work

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

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

9.10 Limitations on ENGINEER's Authority and Responsibilities

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

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

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

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

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

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

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

10.02 Unauthorized Changes in the Work

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

as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 Execution of Change Orders

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

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

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

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

10.04 Notification to Surety

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

10.05 Claims and Disputes

A. Notice: Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the claim,

dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions in paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

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

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

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

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

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

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

11.01 Cost of the Work

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

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

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds

with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

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

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

5. Supplemental costs including the following:

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

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

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease

when the use thereof is no longer necessary for the Work. **Refer to Supplementary Condition SC11.01.A.5.c**

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

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

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (~~except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D~~), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee. **Refer to Supplementary Condition SC-11.01.A.5.f**

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

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

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

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

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

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

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

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

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

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

C. CONTRACTOR's Fee: When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. Documentation: Whenever the cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A. and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance

with generally accepted accounting practices and submit in a form acceptable to ENGINEER as itemized cost breakdown together with supporting data.

11.02 Cash Allowances

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

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

11.03 Unit Price Work

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

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

~~C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if: **Refer to Supplementary Condition SC-11.03.C**~~

~~1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and **Refer to Supplementary Condition SC-11.03.C.1**~~

~~2. there is no corresponding adjustment with respect any other item of Work; and **Refer to Supplementary Condition SC-11.03.C.2**~~

~~3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease. **Refer to Supplementary Condition SC-11.03.C.3**~~

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

12.01 Change of Contract Price

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

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

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

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not

necessarily in accordance with paragraph 12.01.C.2); or

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

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

1. A mutually acceptable fixed fee; or

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

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

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

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

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

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

f. When both addition and credits are involved in any one change, the adjustment in

CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e., inclusive.

12.02 Change of Contract Times

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

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

12.03 Delays Beyond CONTRACTOR's Control

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

12.04 Delays Within CONTRACTOR's Control

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

12.05 Delays Beyond OWNER's and CONTRACTOR's Control

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control

of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 Delay Damages

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

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

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

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

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

13.01 Notice of Defects

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

13.02 Access to Work

A. OWNER, ENGINEER, ENGINEER'S Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interest will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe

conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

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

1. For inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
2. That costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
3. As otherwise specifically provided in the Contract Documents. **Refer to Supplementary Condition SC-13.03**

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

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

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of

ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

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

13.04 Uncovering Work

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR'S expense.

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

13.05 OWNER May Stop the Work

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

13.06 Correction or Removal of Defective Work

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

13.07 Correction Period

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected

Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

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

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

13.08 Acceptance of Defective Work

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

acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 OWNER May Correct Defective Work

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

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

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

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

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

A. The schedule of values established as provided in paragraph 2.05.B.3 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payment

A. Applications for Payments

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER. **Refer to Supplementary Condition SC-14.02.A.1**

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 stipulated in the Agreement.

B. Review of Applications.

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

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. The Work has progressed to the point indicated;

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

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

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved

detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

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

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

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

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

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

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

C. Payment Becomes Due

1. ~~Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.~~ **Refer to Supplementary Condition SC-14.02.C**

D. Reduction in Payment.

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

a. Claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;

c. There are other items entitling OWNER to a set-off against the amount recommended; or

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1. **Refer to Supplementary Condition SC-14.02.E**

14.03 CONTRACTOR'S Warranty of Title

A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial

Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 Partial Utilization

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. 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, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 Final Inspection

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is

complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. Application for Payment

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application of Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 Final Completion Delayed

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. A waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. A waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 OWNER May Suspend Work

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05. **Refer to Supplementary Condition SC-15.01**

15.02 OWNER May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent that could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER had paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's service have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.03 OWNER May Terminate For Convenience

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract.

In such cases, CONTRACTOR shall be paid (without duplication of any items):

1. For completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by Contract Documents in connection with uncompleted Work, plus fair and reasonable sums of overhead and profit on such expenses;

3. For all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. For reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. **Refer to Supplementary Condition SC-15.03**

15.04 CONTRACTOR May Stop Work or Terminate

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until

payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph. **Refer to Supplementary Condition SC-15.04**

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute. **Refer to Supplementary Condition SC-16.01.**

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

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

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, will survive final payment, completion, and an acceptance of the Work or termination or completion of the Agreement.

17.05 *Controlling Law*

A. The Contract is to be governed by the law of the state in which the Project is located. **Refer to Supplementary Condition SC-17.06**

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SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (Engineers Joint Contract Documents Committee No. 1910-8, 1996 edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

GENERAL CONDITIONS

ARTICLE 1 -- DEFINITIONS AND TERMINOLOGY

SC-1.01 Defined Terms

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

ARTICLE 2 -- PRELIMINARY MATTERS

SC-2.02 Copies of Documents

Amend the first sentence of paragraph 2.02.A to read as follows:

OWNER shall furnish to CONTRACTOR up to 5 copies of the Contract Documents as are reasonably necessary for execution of the Work.

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

SC-3.03 Reporting and Resolving Discrepancies

Add the following new paragraph immediately after paragraph 3.03.A.1:

2. In case of discrepancy, calculated dimensions will govern over scaled dimensions, Drawings will govern over Standard Specifications, and Construction Specifications will govern over both Drawings and Standard Specifications. The CONTRACTOR shall take no advantage of any apparent error or omission in the Drawings or Construction Specifications, and the ENGINEER will be permitted to make such corrections and interpretations as may be deemed necessary to fulfill the intent of the Contract Documents.

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

SC-4.01 Availability of Lands

Add the following four new paragraphs immediately after paragraph 4.01.C:

D. If corporate or private property interferes with the Work, CONTRACTOR shall notify, in writing, the owners of such property, advising them of the nature of the interference and shall arrange to cooperate with them for the protection or disposition of such property.

CONTRACTOR shall furnish the ENGINEER with copies of such notifications and with copies of any agreements between the CONTRACTOR and the property owners concerning such protection or disposition.

E. CONTRACTOR shall take all necessary precautions for the protection of corporate or private property, such as walls and foundations of buildings, vaults, underground structures of public utilities, underground drainage facilities, overhead structures of public utilities, trees, shrubbery, crops, and fences contiguous to the work, of which the Contract does not provide for removal. CONTRACTOR shall protect and carefully preserve all official survey monuments, property marks, section markers, and Geological Survey Monuments, or other similar monuments, until OWNER, or an authorized Surveyor or agent has witnessed or otherwise referenced their location or relocation. CONTRACTOR shall notify the ENGINEER of the presence of any such survey or property monuments as soon as they are discovered.

F. CONTRACTOR shall be responsible for the damage or destruction of property of any character resulting from neglect, misconduct, or omission in its manner or method of execution or the non-execution of the work, or caused by defective work or the use of unsatisfactory materials, and such responsibility shall not be released until the work shall have been completed and accepted and the requirements of the Construction Specifications complied with.

G. Whenever public or private property is so damaged or destroyed, the CONTRACTOR shall at its own expense, restore such property to a condition equal to that existing before such damage or injury was done by repairing, rebuilding, or replacing it as may be directed, or the CONTRACTOR shall otherwise make good such damage or destruction in an acceptable manner. If the CONTRACTOR fails to do so, the ENGINEER may, after giving the CONTRACTOR notice in writing, proceed to repair, rebuild, or otherwise restore such property as may be deemed necessary, and the cost thereof shall be deducted from any compensation due, or which may become due, the CONTRACTOR under its Contract.

SC-4.02 Subsurface and Physical Conditions

Add the following language immediately after paragraph 4.02.B.3:

SC-4.04 Underground Facilities

Add the following new paragraphs immediately after paragraph 4.04.B.2:

C. CONTRACTOR shall notify the following underground utility locating service at least two full working days prior to beginning work: Underground Services Alert (1-800) 227-2600 or 811.

1. A list of the major public utilities servicing the work area follows. The list indicates the name and telephone number of the responsible authority of the various utilities which should be notified if conflicts or emergencies arise during the progress of the work.

NV Energy
875 E. Long Street
Carson City, NV 89706
(775) 834-2930

Frontier
1520 Church Street

Gardnerville, NV 89410
(775) 782-0969

Gardnerville Water Company
1579 Virginia Ranch Road
Gardnerville, NV 89410
(775) 782-2339

Town of Gardnerville
1407 Highway 395
Gardnerville, NV 89410
(775) 782-7134

Minden-Gardnerville Sanitation District
1790 Highway 395
Minden, NV 89423
(775) 782-3546

Southwest Gas Corporation
P.O. Box 1190
Carson City, NV 89701
(775) 887-2723

Charter Communications
1802 N. Carson #126
Carson City, NV 89701
(775) 850-8555

2. At points where the CONTRACTOR's operations are adjacent to public and private utilities, CONTRACTOR shall not commence work until CONTRACTOR has made all arrangements necessary for the protection of utilities.

3. CONTRACTOR shall coordinate and cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication of rearrangement work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

SC-4.05 Reference Points

Add the following new paragraphs immediately after paragraph 4.05.A:

- B. OWNER shall be responsible for all construction surveying for this project. All construction surveying will be made under the direct supervision of a Professional Land Surveyor licensed in the State of Nevada, who shall be designated as the Project Surveyor.
- C. The OWNER shall be responsible for directing the Project Surveyor to establish all survey control staking to accomplish the work within the tolerances established in the Specifications and the requirements of the Nevada Administrative Code for Construction Surveys, Sections 625.760, 625.770, 625.775, 625.780, 625.785.
 - a. The survey control staking will be provided by the OWNER within two (2) business days of request by Contractor.

- b. The OWNER will provide one set of preliminary survey stakes to identify the project limits; one set of rough survey control stakes and one set of final survey control stakes at off-sets indicated by the CONTRACTOR. The CONTRACTOR shall be responsible for ensuring the site is properly prepared in advance of the Surveyor arriving on-site.
 - c. Any re-staking costs will be borne by the CONTRACTOR.
- D. The OWNER shall be responsible for directing the Project Surveyor to conduct as-built surveys to obtain the final conditions of the finished project as needed to complete the as-built drawings.

ARTICLE 5 -- BONDS AND INSURANCE

SC-5.02 Licensed Sureties and Insurers

Add the following new paragraph immediately after paragraph 5.02.A:

B. All Sureties and Insurance Companies shall be authorized to do business in the State of Nevada and shall have an A.M. Best rating of A++, A+ or A, with a Financial Size Category of VIII or better. In the event that the Insurer fails to maintain an A.M. Best rating of A++, A+ or A, with a Financial Size Category of VIII or better, the CONTRACTOR shall immediately retain a Surety which does meet the above requirements.

SC-5.04.B.2 CONTRACTOR'S Liability Insurance

Delete paragraph 5.04.B.2 and insert the following in its place:

2. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation, and related coverages under Paragraphs 5.04.A.1 and A.2 of the General Conditions:

- | | | |
|----|---|-------------|
| a. | State: | Statutory |
| b. | Applicable Federal
(e.g., Longshoreman's): | Statutory |
| c. | Employer's Liability: | \$1,000,000 |

2. Contractor's General Liability under Paragraphs 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

- | | | |
|----|---|-------------|
| a. | General Aggregate | \$2,000,000 |
| b. | Products – Completed
Operations Aggregate | \$2,000,000 |
| c. | Personal and Advertising
Injury | \$1,000,000 |
| d. | Each Occurrence
(Bodily Injury and
Property Damage) | \$1,000,000 |
| e. | Property Damage liability insurance will provide | |

- Explosion, Collapse, and Under-ground coverages where applicable.
- f. Excess or Umbrella Liability
 - € General Aggregate \$1,000,000
 - € Each Occurrence \$1,000,000
- 3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:
 - a. Combined Single Limit of \$1,000,000
- 4. The Contractual Liability coverage required by Paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following amounts:
 - a. Bodily Injury:
 - Each person \$1,000,000
 - Each Accident \$1,000,000
 - b. Property Damage:
 - Each Accident \$1,000,000
 - Annual Aggregate \$2,000,000
- 5. Include the following as additional insureds on the policy:

SC-5.04.C CONTRACTOR'S Liability Insurance

Add the following new paragraph immediately after paragraph 5.04.B.7:

C. CONTRACTOR agrees to maintain required workers compensation coverage throughout the entire term of the contract. If CONTRACTOR does not maintain coverage throughout the entire term of the contract, CONTRACTOR agrees that County may, at any time the coverage is not maintained by CONTRACTOR, order the CONTRACTOR to stop work, suspend the contract, or terminate the contract. CONTRACTOR further agrees, if applicable (and CONTRACTOR bears the sole responsibility for producing proof satisfactory to the County that these provisions are not applicable to CONTRACTOR), as a precondition to the performance of any work under this contract and as a precondition to any obligation of the County to make any payment under this contract to provide the County with a certificate of a qualified insurer in accordance with NRS 616B.627 certifying that the CONTRACTOR has complied with the provisions of chapters 616A to 626D of NRS.

SC-5.06.A Property Insurance

Delete paragraph 5.06.A, and paragraphs 5.06.A.1 through 5.06.A.7 in their entirety and insert the following in their place:

A. A CONTRACTOR must purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost of the Work. This insurance shall:

- 1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and 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, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of laws and regulations, water damage, and any other perils or causes of loss that may be specifically required by the Supplementary Conditions.

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

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

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

6. include testing and startup; and

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

SC-5.06.B Property Insurance

Delete paragraph 5.06.B in its entirety and insert the following in its place:

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

SC-5.06.C Property Insurance

Delete paragraph 5.06.C in its entirety and insert the following in its place:

C. All the policies of insurance (and the certificates or other evidence of the policy) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days after written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

SC-5.06.D Property Insurance

Delete paragraph 5.06.D in its entirety.

SC-5.06.E Property Insurance

Delete paragraph 5.06.E in its entirety.

SC-5.07.A Waiver of Rights

Delete paragraph 5.07.A in its entirety and insert the following in its place:

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered by the policy. All policies must contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

SC-5.08.A Receipt and Application of Insurance Proceeds

Delete paragraph 5.08.A in its entirety.

SC-5.08.B Receipt and Application of Insurance Proceeds

Delete paragraph 5.08.B in its entirety.

ARTICLE 6 -- CONTRACTOR'S RESPONSIBILITY

SC-6.08 Permits

- A. The Owner will provide the following permits and associated fees for construction:
- i. Site Improvement Permit from Douglas County Community Development
 - ii. Conditional Letter of Map Revision from FEMA
 - iii. Approval from Town of Gardnerville
 - iv. Approval from Water Conveyance Advisory Committee
- B. The CONTRACTOR is responsible for obtaining all other permits and paying all associated fees for this project.

SC-6.09 Laws and Regulations

Add the following new paragraphs immediately after paragraph 6.09.C:

D. Workers Compensation Coverage.

1. CONTRACTOR agrees as a precondition to the performance of any work under this contract and as a precondition to any obligation of the County to make any payment under this contract to provide the County with a certificate of a qualified insurer in accordance with NRS 616B.627 certifying that the CONTRACTOR has complied with the provisions of chapters 616A to 626D of NRS. CONTRACTOR also agrees, if applicable and before commencing any work under the contract, to complete and to provide the following written request to its insurer:

(Company Name) has entered into a contract with Douglas County to perform work from (starting date) to (ending date) and requests that the Insurer provide to Douglas County: 1) a certificate of coverage issued pursuant to Nev. Rev. Stat. § 616B.627 and 2) notice of any lapse in coverage or nonpayment of coverage that the CONTRACTOR is required to maintain. The certificate of coverage and any notice should be mailed to:

Douglas County School District
1638 Mono Avenue
Minden, Nevada 89423

2. CONTRACTOR agrees to maintain required workers compensation coverage throughout the entire term of the contract. If CONTRACTOR does not maintain coverage throughout the entire term of the contract, CONTRACTOR agrees that County may, at any time the coverage is not maintained by CONTRACTOR, order the CONTRACTOR to stop work, suspend the contract, or terminate the contract. For each six month period this contract is in effect, CONTRACTOR agrees, prior to the expiration of the six month period, to provide another written request to its insurer for the provision of a certificate of coverage and notice of lapse in coverage or nonpayment of premium. If CONTRACTOR does not make the request or does not provide the certificate of coverage before the expiration of the six month period, CONTRACTOR agrees that County may order the CONTRACTOR to stop work, suspend the contract, or terminate the contract.

E. NRS 338.141 Subcontractors: Name and Description of Work. The statutes of NRS 338.141 shall apply. To be deemed a responsive bid, the list of subcontractor form must be submitted even if no subcontractors are required to be listed.

F. NRS 338.147 Award of Contract; Determination of Best Bid. The statutes of NRS 338.147 apply. The CONTRACTOR's attention is directed to the following requirements of NRS 338.147:

1. CONTRACTOR must submit with its bid a signed affidavit certifying that, for the duration of the project:

a. At least 50 percent (50%) of all workers employed on the Project, including without limitation, any employees of the CONTRACTOR, applicant or design-build team and of any subcontractor engaged on the Project, will hold a valid driver's license or identification card issued by the Nevada Department of Motor Vehicles.

b. All vehicles used primarily for the Project will be:

(i.) Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Nevada Department of Motor Vehicles pursuant to NRS 706.726; or

(ii.) Registered in the State of Nevada.

c. At least 50 percent of the design professionals working on the Project, including, without limitation, any employees of the CONTRACTOR, applicant or design-build team and of any subcontractor engaged on the Project, will have a valid driver's license or identification card issued by the Nevada Department of Motor Vehicles.

d. At least 25 percent of the suppliers of the materials used for the Project will be located in Nevada.

e. The CONTRACTOR, applicant or design-build team and any subcontractor engaged on the Project will maintain, and make available for inspection, within Nevada his or her records concerning payroll relating to the Project.

2. Failure to comply with any requirement of subparagraphs 1.a. through 1.e, inclusive, is a material breach of the contract and entitles OWNER to receive liquidated damages equal to 10 percent (10%) of the Contract Price.

3. CONTRACTOR must submit with its bid a signed affidavit certifying that CONTRACTOR has not, within the preceding 365 days, breached a contract related to the improvement of real property for a public entity, and for which the total project cost exceeded \$25,000,000, by failing to comply with the requirements of NRS 338.147.

G. Hourly rate for vehicle and services of driver: Pursuant to the Nevada Administrative Code ("NAC") 338.135, where a truck or truck and trailer combination is rented or leased after April 22, 1969, by a CONTRACTOR or subcontractor on a public work, the hourly rate for the rental or lease of such truck or truck and trailer combination shall, when added to the prevailing rate of wages required by NRS 338.020 for the driver, not be less than the hourly rate for similar vehicles with a driver as such hourly rate appears in freight tariffs approved by the public service commission of Nevada for the area in which the public work is located.

H. Historic Preservation. The CONTRACTOR's attention is directed to the following sections of the Nevada Revised Statutes concerning historic preservation:

1. 383.121 Intergovernmental cooperation required.

a. All departments, commissions, boards and other agencies of the state and its political subdivisions shall cooperate with the office in order to salvage or preserve historic, prehistoric or paleoenvironmental evidence located on property owned or controlled by the United States, the State of Nevada or its political subdivisions.

b. When any agency of the state or its political subdivisions is preparing or has contracted to excavate or perform work of any kind on property owned or controlled by the United States, the State of Nevada or its political subdivisions which may endanger historic, prehistoric or paleoenvironmental evidence found on the property, or when any artifact, site or other historic or prehistoric evidence is discovered in the course of such excavation or work, the agency or the CONTRACTOR hired by the agency shall notify the office and

cooperate with the office to the fullest extent practicable, within the appropriations available to the agency or political subdivision for that purpose, to preserve or permit study of such evidence before its destruction, displacement or removal.

c. The provisions of this section must be made known to all private contractors performing such excavation or work for any agency of the state or its political subdivisions.

2. 383.170 Procedure upon discovery of Indian burial site; permissible excavation.

a. A person who disturbs the cairn or grave of a native Indian through inadvertence while engaged in a lawful activity such as construction, mining, logging or farming and any other person who discovers the cairn or grave of a native Indian shall immediately report the discovery and the location of the Indian burial site to the division. The division shall immediately consult with the Nevada Indian commission and notify the appropriate Indian tribe. The Indian tribe may, with the permission of the landowner, inspect the site and recommend an appropriate means for the treatment and disposition of the site and all artifacts and human remains associated with the site.

b. If the Indian burial site is located on private land and:

(i.) The Indian tribe fails to make a recommendation within 48 hours after it receives notification pursuant to subsection 1; or

(ii.) The landowner rejects the recommendation and mediation conducted pursuant to NRS 383.160 fails to provide measures acceptable to the landowner, the landowner shall, at this own expense, reinter with appropriate dignity all artifacts and human remains associated with the site in a location not subject to further disturbance.

c. If the Indian burial site is located on public land and action is necessary to protect the burial site from immediate destruction, the division may cause a professional archeologist to excavate the site and remove all artifacts and human remains associated with the site for subsequent re-interment, following scientific study, under the supervision of the Indian tribe.

d. Any other excavation of an Indian burial site may be conducted only:

(i.) By a professional archeologist;

(ii.) After written notification to the administrator; and

(iii.) With the prior written consent of the appropriate Indian tribe. Failure of a tribe to respond to a request for permission within 60 days after its mailing by certified mail, return receipt requested, shall be deemed consent to the excavation.

All artifacts and human remains removed during such an excavation must, following scientific study, be reinterred under the supervision of the Indian tribe, except that the Indian tribe may, by explicit written consent, authorize the public display of a particular artifact. The archeologist, Indian tribe and landowner shall negotiate an agreement to determine who will pay the expenses related to the interment.

I. If blasting or use of explosives is necessary for prosecution of Work, the CONTRACTOR shall provide the ENGINEER with a blasting plan in compliance with OSHA, State, County and local regulations, laws, ordinances, and requirements. CONTRACTOR shall exercise the utmost care not to endanger life or property. CONTRACTOR shall be responsible for all damage resulting from the use of explosives. CONTRACTOR shall notify each property owner and utility company having structures or facilities in proximity to the site of the work of its intentions to use explosives. Such notice shall be given sufficiently in advance to enable the utility companies to take such steps as they may deem necessary to protect their property from injury.

SC-6.12.B Record Documents

Add the following new paragraphs immediately after paragraph 6.12.A:

B. CONTRACTOR shall mark up one set of paper prints to show the As-built conditions. They shall include all the information shown on the Contract Drawings and a record of all deviations, modifications, or changes from those Drawings, however minor, which were incorporated in the Work, all additional work not appearing on the Contract Drawings and all changes which are made after final inspection of the Contract Work. These As-built marked prints shall be kept current and available on the job site at all times. All changes from the Contract Drawings 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 it has been inspected, approved, and recorded. The As-built marked prints will be jointly inspected for accuracy and completeness by the ENGINEER'S representative and a responsible representative of the CONTRACTOR prior to submission of the monthly pay estimate. Failure to keep the As-built marked prints on a current basis shall be sufficient justification to suspend pay estimates. The drawings shall show the following information, but not be limited to:

1. The location of any utility lines or other installations of any kind or description known to exist within the construction area. The location includes dimensions of permanent features.
2. The location and identification of all surface installations within 100 feet of the construction work.
3. The location and dimensions of any changes within the building or structure.
4. Correct grade or alignment of roads, structures, or utilities if any changes were made from Contract Drawings.
5. Correct elevations if changes were made in site grading.
6. Changes in details or design or additional information obtained from working drawings specified to be prepared or furnished by the CONTRACTOR including but not limited to fabrication, erection, installation plans and placing details, pipe sizes, insulation material, dimensions or equipment foundations, etc.
7. The topography and grades of all drainage installed or affected as a part of the Work.
8. All changes or modifications which result from the final inspection.
9. The elevation and location of all and any free-standing groundwater encountered during construction.

The As-built marked prints shall be delivered to the ENGINEER at the time of final inspection for ENGINEER's review and approval. All approval and acceptance of As-built drawings shall be accomplished before final payment is made to the CONTRACTOR.

SC-6.13 Safety and Protection

Add the following new paragraphs immediately after paragraph 6.13.B:

C. Occupational Safety and Health Standards: CONTRACTOR's methods of construction and safety requirements, including but not limited to trench excavation and shoring where applicable, shall conform to the requirements of the Occupational Safety and Health Standards for the Construction Industry. The document entitled "State of Nevada Occupational Safety and Health Standards for the Construction Industry" (29 CFR PART 1926) with Amendments as of February 1, 1998, including 29 CFR part 1910 General Industry Safety and Health Standards Applicable to Construction, is not attached to the Contract Documents. Said requirements as identified and established above are incorporated herein by reference. Copies may be obtained at the Industrial Relations Department, Division of Occupational Safety and Health, 1390 South Curry Street, Carson City, Nevada. Copies may be examined at the office of Douglas County Community Development at 1594 Esmeralda Ave, Minden, Nevada, 8:00 AM to 4:00 PM except on holidays.

D. Power Lines: No equipment of any kind shall be used or permitted within such proximity to the conductors of NV Energy's power lines as to be in violation of the safe working clearance prescribed by the National Electrical Safety Code.

E. Protection of Utilities: The CONTRACTOR shall verify all utility locations prior to the start of construction. This shall include, but not necessarily limited to: irrigation and drainage ditches, culverts, water lines, sewer lines, telephone cables, cable television, gas lines and electric lines. Prior to the start of construction the CONTRACTOR shall call USA DIGS at 1-800-227-2600 (two full working days notice required). The failure of any utility to subscribe to DIGS shall not relieve the CONTRACTOR from the responsibility of protection of that utility on the site. Any physical structure (i.e. curbs, sidewalks, paving, buildings, landscape improvements, utilities, etc., damaged by the CONTRACTOR shall be repaired or replaced in a condition equal to or better than the condition prior to the damage. Such repair or replacement shall be accomplished at the CONTRACTOR's expense without additional compensation from the OWNER.

ARTICLE 9 -- ENGINEER'S STATUS DURING CONSTRUCTION

SC-9.08.A Determination for Unit Prices

Delete paragraph 9.08.A in its entirety and insert the following in its place:

ENGINEER will have authority to determine the actual quantities and classifications of items of Unit Price Work performed by CONTRACTOR, and the written decisions of ENGINEER on such matters will be final, binding on OWNER and CONTRACTOR and not subject to appeal (except as modified by ENGINEER to reflect changed factual conditions).

Article 11 -- COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

SC-11.01.A.5.c Cost of the Work

Add the following language to the end of paragraph 11.01.A.5.c:

- (i) Rental rates shall be determined as follows:
 - (a) The base rates shall be those established in publications and revisions thereto entitled "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment" as published by K-III, 1735 Technology Drive, Suite 401, San Jose, CA 95110-1313, Phone (408) 467-6700
 - (b) The hourly rate to be paid shall be the monthly rate multiplied by an average regional adjustment factor of 1.05, divided by 176, multiplied by the appropriate rate adjustment factor, plus the estimated operating cost per hour shown therein, rounded to the nearest \$0.10.
 - (c) Attachments (e.g. tractor with ripper and dozer or tractor with loader and backhoe) will be included in the hourly rental rate only when deemed essential to the work as determined the Engineer. When multiple attachments are approved for use and are being used interchangeably, the attachment having the higher rental rate shall be the only one included for payment.
 - (d) No direct payment will be made for necessary accessories (including replenishing blades, augers, teeth, hoses, bits, etc.) if not listed in the Rental Rate Blue Book.
 - (e) No compensation will be allowed for shop tools having a daily rental rate of less than \$10 as set forth in Section 18 of the Rental Rate Blue Book.
- ii. If ordered to use equipment not listed in the aforementioned publications, the Engineer will establish a rental rate for such equipment. CONTRACTOR shall furnish cost data that might assist in the establishment of such rental rate.
- iii. Payment will be made for the actual time that such equipment is in operation on the work.
- iv. Authorized standby time for idle equipment shall be paid at 50% of the specified rate, less the estimated operating cost per hour. No markup will be added for overhead and profit.
- v. Rental rate paid as above provided shall include the cost of fuel, oil, lubrication, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals. CONTRACTOR shall provide the Engineer with a complete Force Account Equipment Listing (Nevada Department of Transportation Form 040-033) for each piece of equipment utilized.

ARTICLE 11 -- CHANGES OF CONTRACT PRICE

SC-11.01.A.5.f Cost of the Work

Amend the first sentence of paragraph 11.01.A.5.f to read as follows:

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, provided such losses and damages have resulted from 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.

SC-11.03.C Unit Price Work

Delete paragraph 11.03.C in its entirety.

SC-11.03.C.1 Unit Price Work

Delete paragraph 11.03.C.1 in its entirety.

SC-11.03.C.2 Unit Price Work

Delete paragraph 11.03.C.2 in its entirety.

SC-11.03.C.3 Unit Price Work

Delete paragraph 11.03.C.3 in its entirety.

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

SC-13.03 Tests and Inspections

Add the following new paragraph immediately after paragraph 13.03.B.3:

4. that costs incurred by OWNER due to retesting, re-inspection, re-staking or standby time due to unacceptable materials, or workmanship provided by the CONTRACTOR, or due to poor scheduling by the CONTRACTOR of tests of inspections, will be deducted from the payments to the CONTRACTOR. CONTRACTOR shall stop work as necessary to allow for inspections and tests by OWNER and ENGINEER.

SC-13.03.G Tests and Inspections

Add the following new paragraph immediately after paragraph 13.03.F:

G. The Owner intends to provide inspection for the project. The inspector will be available during a forty (40) hour period during the week from Monday through Friday. In the event the CONTRACTOR receives permission from the OWNER and elects to work more than forty hours during the week or more than 10 hours in one day, or on a Saturday, Sunday, or legal holiday, the CONTRACTOR shall be responsible for all inspection, engineering and testing costs incurred during that period. For all inspection and testing work performed on Saturday, Sunday, or legal holidays the minimum chargeable time shall be four (4) hours. The Owner reserves the right to deduct these inspection, engineering, and testing costs directly from the CONTRACTOR'S payments.

ARTICLE 14 -- PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02.A.1 Application for Progress Payment

Add the following language to the end of paragraph 14.02.A.1:

Any request for partial or final payment shall specifically list the work completed. All invoices submitted to OWNER must be made on company letterhead, reference the Purchase Order

Number as submitted to CONTRACTOR under the Notice to Proceed, and be in original format: OWNER will not authorize payments from carbon or Xerox copies.

SC-14.02.C Payment Becomes Due

Delete paragraph 14.02.C.1 in its entirety and insert the following in its place:

Not more than thirty days after presentation of the application for payment to OWNER with ENGINEER's recommendation, the amount recommended will become due, and when due will be paid by OWNER to CONTRACTOR.

SC-14.02.E. Progress Payments:

Add the following new paragraphs immediately after paragraph 14.02.D.3:

E. Progress payments will be made in accordance with NRS 338.515.

F. CONTRACTOR shall comply with NRS 338.550 through NRS 338.570 regarding payments made by CONTRACTOR to subcontractors and suppliers.

ARTICLE 15 -- SUSPENSION OF WORK AND TERMINATION

SC-15.01 OWNER May Suspend Work:

Add the following new paragraphs immediately after paragraph 15.01.A.:

B. If the performance of all or any part of the work is suspended, delayed or interrupted for an unreasonable period of time by an act of the OWNER in administration of the Contract, or by the OWNER's failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), the OWNER will make an adjustment for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and modify the Contract in writing. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the CONTRACTOR, or (2) for which an equitable adjustment is provided for or excluded under any other provision of the Contract.

C. No claim under paragraphs 15.01.A or 15.01.B shall be allowed unless the amount claimed is asserted in writing as soon as practicable after the termination of such suspension, delay or interruption, but no later than the date of application for final payment under the contract.

SC-15.03 OWNER May Terminate for Convenience:

Add the following new paragraphs immediately after paragraph 15.03.B:

C. This Contract may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the CONTRACTOR is given written notice (delivered by certified mail, return receipt requested) of intent to terminate, and an opportunity for consultation with the terminating party prior to termination.

D. If termination for default is effected by the OWNER, and equitable adjustment in the price provided for in this Contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the OWNER because of the CONTRACTOR's default. If termination for default is effected by the CONTRACTOR, or if termination for convenience is effected by the OWNER, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the CONTRACTOR for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the CONTRACTOR relating to commitments which had become firm prior to the termination.

E. Upon receipt of a termination action under paragraphs 15.03.C or 15.03.D above, the CONTRACTOR shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER all data, Drawings, Specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONTRACTOR in performing this Contract, whether completed or in process.

F. Upon termination under paragraphs 15.03.C or 15.03.D above, the OWNER may take over the work and may award another party a contract to complete the work under this Contract.

G. If, after termination for failure of the CONTRACTOR to fulfill contractual obligations, it is determined that the CONTRACTOR had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Contract Price shall be made as provided in paragraph 15.03.D of this clause.

SC-15.04 CONTRACTOR May Stop Work or Terminate:

Add the following new paragraph immediately after paragraph 15.04.A:

B. This Contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under the Contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

ARTICLE 16 -- DISPUTE RESOLUTION

SC-16.01--Methods and Procedures

Add the following new paragraph immediately after paragraph 16.01.A:

B. Pursuant to NRS 388.150(1) and (2), any dispute between OWNER and CONTRACTOR, which cannot be settled otherwise, will be arbitrated in accord with arbitration rules administered by either the American Arbitration Association or the Nevada Arbitration Association. OWNER will select which arbitration rules will be used to settle these disputes.

ARTICLE 17 -- MISCELLANEOUS

Add the following new paragraph immediately after paragraph 17.05:

SC-17.06 Access To Records

A. At all times during regular business hours and as often as the State of Nevada requires, CONTRACTOR shall provide full and free access to the OWNER, ENGINEER, and State of Nevada to any books, documents, papers, and records related to the work for the purpose of examination, audit, and duplication. The CONTRACTOR shall maintain all required accounts, records, and books for three years after final completion of the work.

Other Supplementary Conditions that may be used

ARTICLE 17 -- MISCELLANEOUS

Add the following new paragraphs immediately after paragraph 17.05:

SC-17.06 Road Closures and Traffic Delays

A. Closure of public roads in order to facilitate construction will not be permitted. Any temporary Traffic control is per NDOT requirements. CONTRACTOR shall notify the OWNER 7 days in advance of any delays, and the following agencies two working days in advance of any anticipated traffic delays:

Douglas County Sheriff's Department:	782-9935
East Fork Fire District:	782-9040
Douglas County Paramedics:	782-9044
Douglas County Parks & Recreation:	782.9829

SC-17.07 Construction Water

Add the following new paragraph immediately after paragraph 17.07.B:

A. CONTRACTOR shall be responsible for obtaining construction water from an approved hydrant from any of the local water purveyors at the contractors cost.