

**BIDDING REQUIREMENTS AND  
CONTRACT DOCUMENTS  
FOR**

**Oelwein 2023  
Plaza Park Improvements**  
CONTRACT NO. 20-CVN-023

Oelwein, Iowa

PREPARED BY

**CONFLUENCE**

Confluence  
900 2<sup>nd</sup> Street SE, Suite 104  
Cedar Rapids, IA 52404  
(319) 409-5401

FILED IN THE OFFICE OF THE CITY CLERK ON  
February 8, 2023



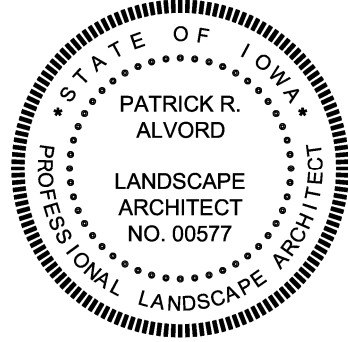
OELWEIN 2023 PLAZA PARK SITE IMPROVEMENTS  
CONTRACT NO. 20-CVN-023  
CERTIFICATIONS

**LANDSCAPE ARCHITECT'S CERTIFICATION:**

I hereby certify that the Specifications contained herein were prepared by me or under my direct supervision and responsible charge. I am a duly licensed Architect under the laws of the State of Iowa.

\_\_\_\_\_  
Patrick Alvord, PLA, RA, LEED AP  
Iowa License No. 00577  
My License Renewal Date is 6/30/2024

\_\_\_\_\_  
Date

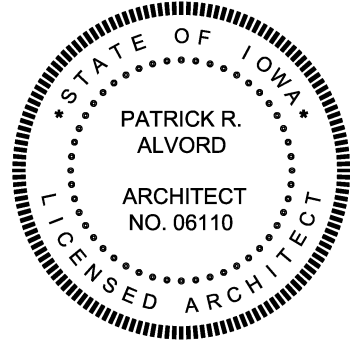


**ARCHITECT'S CERTIFICATION:**

I hereby certify that the Specifications contained herein were prepared by me or under my direct supervision and responsible charge. I am a duly licensed Architect under the laws of the State of Iowa.

\_\_\_\_\_  
Patrick Alvord, PLA, RA, LEED AP  
Iowa License No. 06110  
My License Renewal Date is 6/30/2024

\_\_\_\_\_  
Date

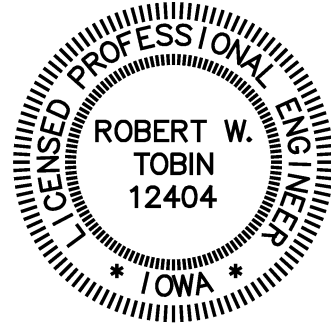


**CIVIL ENGINEER'S CERTIFICATION:**

I hereby certify that the Specifications contained herein were prepared by me or under my direct supervision and that I am a duly licensed professional engineer under the laws of the State of Iowa.

\_\_\_\_\_  
Robert W. Tobin, PE  
Iowa License No. 12404  
My License Renewal Date is 12/31/2023

\_\_\_\_\_  
Date



**ELECTRICAL ENGINEER'S CERTIFICATION:**

I hereby certify that the Specifications contained herein were prepared by me or under my direct supervision and that I am a duly licensed professional engineer under the laws of the State of Iowa.

\_\_\_\_\_  
Jeff R. Reinhart, PE  
Iowa License No. 13499  
My License Renewal Date is 12/31/2023

\_\_\_\_\_  
Date





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**ADVERTISEMENT FOR BIDS  
OELWEIN 2023 PLAZA PARK IMPROVEMENTS  
OELWEIN, IOWA**

**General Notice**

The City of Oelwein (Owner) is requesting Bids for the construction of the following Project:

**OELWEIN 2023 PLAZA PARK IMPROVEMENTS  
OELWEIN, IOWA**

Sealed bids for the construction of the Project will be received by the City Clerk of the City of Oelwein, Iowa, at the City Clerk's Office located at 20 2<sup>nd</sup> Ave SW, Oelwein, IA 50662, until **Tuesday, March 7, 2023, at 11:00 AM** local time. At that time, the Bids received will be publicly opened and read.

The extent of work involved includes furnishing labor, equipment, and new materials for construction of the Improvements. The Project includes the following Work:

This project consists of park improvements including concrete pedestrian walkways and curb lines, utility improvements, a container building for restrooms and another container building for concessions/storage, a play area with tumble mounds and synthetic turf, a cantilevered shade canopy, festoon lighting, and landscape improvements.

The method of construction shall be by contract in accordance with the Bidding Requirements and Contract Documents for said improvements approved by the City of Oelwein.

Bids are requested for the following Contract: Oelwein 2023 Plaza Park Improvements

Each bid shall be made out on the form furnished by the City of Oelwein and shall be submitted in a sealed envelope marked, Oelwein 2023 Plaza Park Improvements, Oelwein, Iowa.

Each bid must be accompanied by a bid security in a separate sealed envelope consisting of either: (1) by a cashier's check or certified check in the amount of five percent (5%) drawn on an Iowa bank or a bank chartered under the laws of the United States; or (2) a Bid Bond or credit union certified share draft in the amount of five percent (5%) of the bid, drawn on a credit union in Iowa or chartered under the laws of the United States.

The bid security shall be made payable to the City of Oelwein.

The bid security must not contain any conditions either in body or as an endorsement thereon. The bid security shall be forfeited by the City of Oelwein as liquidated damages in the event the successful bidder fails to enter into a contract within fifteen (15) days of the Notice of Award and post bond satisfactory to the Board ensuring the faithful fulfillment of the contract and maintenance of said improvements as required by law and the contract documents.

**Each bid must be accompanied by CDBG Intent to comply with Section 3 Requirements.**

At a minimum, the awarded contractor will be required to submit each employee's self-certified income (for those working on the project) to the CDBG administrator to meet Section 3 requirements.

The Owner reserves the right to reject any or all bids and to waive informalities. The Owner reserves the right to defer acceptance of any bid for a period not to exceed thirty (30) days from the date of receipt of bids.

Bidders shall not be permitted to withdraw their bids for a period of forty-five (45) days after the same are opened.

The successful bidder will be required to furnish a bond in an amount equal to one hundred percent (100%) of the contract price, said bond to be issued by a responsible surety approved by the Owner and which shall guarantee a faithful performance of the Contract and the terms and conditions therein contained and shall guarantee the prompt payment of all materials and labor and protect and save harmless the Owner from claims and damages of any kind caused by the operations of the Contractor and shall also guarantee the maintenance of the improvements constructed for a period of two (2) years after completion and acceptance by the Owner.

Payment to the Contractor for said construction will be made in cash from the following sources: Cash from any fund of Oelwein, which may be legally used for such purposes; proceeds derived from the sale and issuance of Utility Revenue Bonds, or Federal or State grants or loans. Monthly estimates will be made by the Engineer and payment will be made to the Contractor in the amount of ninety-five percent (95%) of said estimate on or about 30<sup>th</sup> day of each month provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. Final payment will be made not sooner than thirty (30) days following final acceptance of the work by the City of Oelwein.

Bidding Requirements and Contract Documents governing the construction of the proposed improvements have been prepared by Confluence, Inc., Cedar Rapids, Iowa which documents and the proceedings of the City Council referring to and defining said improvements are hereby made a part of this Notice and the proposed contract by reference and the proposed contract shall be executed to comply therewith.

#### **Laws and Regulations**

The City of Oelwein, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, U.S.C. 2000d 4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to the advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, or disability in consideration for an award.

Nondiscrimination In Employment: Bidders on this work will be required to comply with the President's Executive Order No. 11246. Requirements for bidders and contractors under this order are explained in the specifications.

By virtue of statutory authority, preference will be given to products of, provisions grown, and coal produced within the State of Iowa and to Iowa Domestic Labor.

Iowa law provides that on public improvements a resident bidder shall be allowed preference as against a nonresident bidder from a state or foreign country which gives or requires a preference to bidders from that state or foreign country. The preference so allowed shall be equivalent to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. Any bidder or equipment supplier whose firm or affiliate is listed in on the U.S. General Services Administration Excluded Parties List System web site at <http://www.epls.gov/> will be prohibited from the bidding process. Anyone submitting a bid who is listed on this web site will be determined to be a non-responsive bidder in accordance with 40 CFR Part 31.

### **Project Funding**

Funding of this project will utilize CDBG, which involves certain goals regarding awarding of sub-agreements to small, minority and women-owned businesses, collectively known as Disadvantaged Business Enterprises (DBEs). Only work performed by certified DBEs can be counted toward the goals. In Iowa, DBEs must be certified through the Iowa Department of Transportation (IDOT). Information on certification requirements and a list of certified DBEs is on the IDOT website at [http://www.iowadot.gov/contracts/contracts\\_eoaa.htm](http://www.iowadot.gov/contracts/contracts_eoaa.htm).

This Project is subject to Federal Labor Standards Provisions, including Davis-Bacon prevailing wage rates requirements. This project requires federal prevailing wage rates.

### **Contract Times**

The work under the proposed contract shall commence within ten (10) days of the written "Notice to Proceed". The "Notice to Proceed" is anticipated to be issued within seven (7) days of the Effective Date of the Agreement, and Contract Times for the Work will commence no later than November 01, 2022. The work shall be substantially completed by **May 15, 2023** and ready for final completion on or before **May 30, 2023**, subject to any changes by the Owner.

### **Obtaining the Bidding Documents**

Information and Bidding Documents for the Project can be found at the following designated website: <https://www.rapidsreproplanroom.com/>

Prospective bidders may download the digital plan documents at no cost but must input the Rapids project reference number 17523 on the website's project search page. Please contact Rapids Reprographics at 1-800-383-1223 for assistance in free membership registration, downloading, printing, and working with this digital project information. Prospective Bidders are urged to register with the designated website as a plan holder, even if Bidding Documents are obtained from a plan room or source other than the designated website in either electronic or paper format. The designated website will be updated periodically with addenda, lists of registered plan holders, reports, and other information relevant to submitting a Bid for the Project. All official notifications, addenda, and other Bidding Documents will be offered only through the designated website. Neither Owner nor Engineer will be responsible for Bidding Documents, including addenda, if any, obtained from sources other than the designated website.

The Issuing Office for the Bidding Documents is:  
Confluence, Inc.  
900 2<sup>nd</sup> Street SE, Suite 104  
Cedar Rapids, IA 52401

Prospective Bidders may examine the Bidding Documents now on file in the office of the City Clerk, City Hall, Oelwein, Iowa, and may obtain paper copies of the Bidding Documents from the Issuing Office as described below. Partial sets of Bidding Documents will not be available from the Issuing Office. Neither Owner nor Engineer will be responsible for full or partial sets of Bidding Documents, including addenda, if any, obtained from sources other than the Issuing Office.

Printed copies of the Bidding Documents may be obtained from the Issuing Office by paying a deposit of \$50.00 for each set. Bidders who return full sets of the Bidding Documents in good condition within 14 days after Award of Contract will receive a full refund. If all documents are not returned in a reusable condition and within 14 days, the deposit shall be forfeited.

**Pre-bid Conference**

A pre-bid conference will be conducted for this project on **February 28 at 11am at Council Chambers, 20 2<sup>nd</sup> Ave SW, Oelwein, IA 50662**

**Instructions to Bidders.**

For all further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to the Instructions to Bidders that are included in the Bidding Documents.

**Section 3 language for procurement documents**

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- C. The contractor agrees to post copies of a notice advising workers of the Contractor's commitments under Section 3 in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to provide written notice of employment and contracting opportunities to all known Section 3 Workers and Section 3 Businesses.

- E. The contractor agrees to employ, to the greatest extent feasible, Section 3 workers or provide written justification to the recipient that is consistent with 24 CFR Part 75, describing why it was unable to meet minimum numerical Section 3 Worker hours goals, despite its efforts to comply with the provisions of this clause.
- F. The contractor agrees to maintain records documenting Section 3 Workers that were hired to work on previous Section 3 covered projects or activities that were retained by the contractor for subsequent Section 3 covered projects or activities.
- G. The contractor agrees to post contract and job opportunities to the Opportunity Portal and will check the Business Registry for businesses located in the project area.
- H. The contractor agrees to include compliance with Section 3 requirements in every subcontract for Section 3 projects as defined in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
- I. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.
- J. The contractor will certify that they have followed prioritization of effort in 24 CFR part 75.19 for all employment and training opportunities. The contractor will further certify that it meets or exceeds the applicable Section 3 benchmarks, defined in 24 CFR Part 75.23, and if not, shall describe in detail the qualitative efforts it has taken to pursue low- and very low-income persons for economic opportunities.
- K. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

Section 3 Business Concerns are encouraged to respond to this proposal. A Section 3 Business Concern is one that satisfies one of the following requirements:

- 1. It is at least 51 percent owned and controlled by low- or very low-income persons;
- 2. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 Workers\*; or
- 3. It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

\* A Section 3 Worker is defined as any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

1. The worker's income for the previous or annualized calendar year is below the applicable income limit established by HUD;
2. The worker is employed by a Section 3 business concern; or
3. The worker is a YouthBuild participant.

Businesses that believe they meet the Section 3 criteria are encouraged to register as a Section 3 Business through HUD's website: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/RegisterBusiness>



## **INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACT**

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**ARTICLE 1—DEFINED TERMS**

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office*—The office from which the Bidding Documents are to be issued, and which registers plan holders.
  - B. The Issuing Office for this project is Confluence, Inc., 900 2<sup>nd</sup> Street SE, Suite 104, Cedar Rapids, Iowa 50401; telephone 319-409-5401.

**ARTICLE 2—BIDDING DOCUMENTS**

- 2.01 Bidder shall obtain a complete set of Bidding Requirements and proposed Contract Documents (together, the Bidding Documents). See the Agreement for a list of the Contract Documents. It is Bidder's responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers.
- 2.02 Bidding Documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download or distribution of the Bidding Documents does not confer a license or grant permission or authorization for any other use. Authorization to download documents, or other distribution, includes the right for plan holders to print documents solely for their use, and the use of their prospective Subcontractors and Suppliers, provided the plan holder pays all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.
- 2.03 Owner has established a Bidding Documents Website as indicated in the Advertisement or invitation to bid. Owner recommends that Bidder register as a plan holder with the Issuing Office at such website, and obtain a complete set of the Bidding Documents from such website. Bidders may rely that sets of Bidding Documents obtained from the Bidding Documents Website are complete, unless an omission is blatant. Registered plan holders will receive Addenda issued by Owner.
- 2.04 Bidder may register as a plan holder and obtain complete sets of paper Bidding Documents, in the number and for deposit sum, if any, stated in the Advertisement or invitation to bid, from the Issuing Office. Bidders may rely that sets of Bidding Documents obtained from the Issuing Office are complete, unless an omission is blatant. Registered plan holders will receive Addenda issued by Owner. The deposit will be refunded to each document holder of record who returns a complete set of Bidding Documents in good condition within 14 days after Award of Contract.
- 2.05 *Electronic Documents*
- A. When the Bidding Requirements indicate that electronic (digital) copies of the Bidding Documents are available, such documents will be made available to the Bidders as Electronic Documents in the manner specified.

1. Bidding Documents will be provided in Adobe PDF (Portable Document Format) (.pdf). It is the intent of the Engineer and Owner that such Electronic Documents are to be exactly representative of the paper copies of the documents. However, because the Owner and Engineer cannot totally control the transmission and receipt of Electronic Documents nor the Contractor's means of reproduction of such documents, the Owner and Engineer cannot and do not guarantee that Electronic Documents and reproductions prepared from those versions are identical in every manner to the paper copies.
  
- B. Unless otherwise stated in the Bidding Documents, the Bidder may use and rely upon complete sets of Electronic Documents of the Bidding Documents, described in Paragraph 2.05.A above. However, Bidder assumes all risks associated with differences arising from transmission/receipt of Electronic Documents versions of Bidding Documents and reproductions prepared from those versions and, further, assumes all risks, costs, and responsibility associated with use of the Electronic Documents versions to derive information that is not explicitly contained in printed paper versions of the documents, and for Bidder's reliance upon such derived information.
  
- C. Prior to bidding or after the Contract is awarded, the Engineer will, if available, provide for the use of the Contractor documents that were developed by Engineer as part of the Project design process, as Electronic Documents in native file formats.
  1. Electronic Documents that are available in native file format include
    - a. **AutoCAD Civil 3D**
  2. Release of such documents will be solely for the convenience of the Contractor. No such document is a Contract Document.
  3. Unless the Contract Documents explicitly identify that such information will be available to the Successful Bidder (Contractor), nothing herein will create an obligation on the part of the Owner or Engineer to provide or create such information, and the Contractor is not entitled to rely on the availability of such information in the preparation of its Bid or pricing of the Work. In all cases, the Contractor shall take appropriate measures to verify that any electronic/digital information provided in Electronic Documents is appropriate and adequate for the Contractor's specific purposes.
  4. In no case will the Contractor be entitled to additional compensation or time for completion due to any differences between the actual Contract Documents and any related document in native file format.
  5. The Contractor shall sign and agree to the Engineer's Electronic Media Transfer Agreement.

### **ARTICLE 3—QUALIFICATIONS OF BIDDERS**

- 3.01 Contractor and all subcontractors that are utilized shall be registered with the Iowa Labor Commission according to the provisions of Chapter 91C of the Code of Iowa. Contractor's

registration number shall be included on the Bid Form. Registration forms can be obtained from the Iowa Division of Labor at 1000 East Grand Avenue, Des Moines, Iowa 50319 (<http://www.iowaworkforce.org/labor/contractor.htm>, phone 515-281-3606). In the event that the selected Contractor is not registered by the date the City intends to make an award, Contractor will be allowed 10 calendar days to complete registration. If the registration number is not provided by the tenth calendar day, the award may be made to another Contractor.

- 3.02 Nondiscrimination in Employment. Bidders on this Work will be required to comply with Executive Order 11246 as amended. By submission of its bid, each bidder acknowledges that it understands and agrees to be bound by the equal opportunity requirements of EPA regulations (40 CFR Part B, particularly Section 8.4 [b]), which shall be applicable throughout the performance of Work under this Contract. Each bidder agrees that if awarded a contract, it will similarly bind contractually each Subcontractor. In implementation of the foregoing policies, each bidder further understands and agrees that if awarded a contract, it must engage in affirmative action directed at promoting and ensuring equal employment opportunity in the workforce used under the Contract and that it must require contractually the same effort of all Subcontractors whose subcontracts exceed \$10,000). The bidder understands and agrees that "affirmative action" as used herein shall constitute a good faith effort to achieve and maintain that amount of minority employment in the onsite workforce used on the Project which corresponds, for each trade used, to the minority population in the serving labor market area from which workers are reasonably available for hire for the Project.
- 3.03 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population (Exec. Order No.12898, 59 Fed. Reg. 7629 - 1994). These four laws and Executive Order No. 12898 prohibit discrimination in the provision of services or benefits on the basis of race, color, national origin, sex, handicap or age in programs or activities receiving federal financial assistance. These anti-discrimination provisions apply to the entire operations of federal assistance recipients, not just the specific program or activity being funded by the assistance. IDNR will require assurances from the CWSRF applicant and the applicant's contractors stating that they will comply with the requirements of the non-discrimination laws.
- 3.04 Debarred or Suspended Contractors. This project will be subject to regulations concerning "Debarment and Suspension under EPA Assistance Programs". Any bidder or equipment supplier whose firm or affiliate is listed in the General Services Administration (GSA) monthly publication entitled "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" will be prohibited from the bidding process. Anyone submitting a bid who is listed will be determined to be a nonresponsive bidder. A contractor's Suspension/Debarment Certification is contained in the specifications; however, this certification should not preclude any interested party from ascertaining whether the certifying firm or person is actually on the GSA "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs". The list will be available for inspection upon request to determine a person's eligibility for award in accordance with 40 CFR Part 32, dated May 26, 1988.
- 3.05 To demonstrate Bidder's qualifications to perform the Work, after submitting its Bid and within five (5) business days of Owner's request, Bidder must submit the following information:

- A. Written evidence establishing its qualifications such as financial data, previous experience, and present commitments on EJCDC C-451 Bidders Qualifications Statements, provided with the Bidding Documents.
  - B. A written statement that Bidder is authorized to do business in the State of Iowa.
  - C. Bidder's state or other contractor license number, if applicable.
  - D. Other required information regarding qualifications.
- 3.06 A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.
- 3.07 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.

**ARTICLE 4—PRE-BID CONFERENCE**

- 4.01 A pre-bid conference will be conducted for this project on **February 28 at 11am at Council Chambers, 20 2<sup>nd</sup> Ave SW, Oelwein, IA 50662**

**ARTICLE 5—SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE**

- 5.01 Site and Other Areas
- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.
- 5.02 *Existing Site Conditions*
- A. Subsurface and Physical Conditions; Hazardous Environmental Conditions
    1. The Supplementary Conditions identify the following regarding existing conditions at or adjacent to the Site:
      - a. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data.
      - b. Those drawings known to Owner of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data.
      - c. Reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
      - d. Technical Data contained in such reports and drawings.
    2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract

Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

3. If the Supplementary Conditions do not identify Technical Data, the default definition of
4. Technical Data set forth in Article 1 of the General Conditions will apply.

- B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05 of the General Conditions, and not in the drawings referred to in Paragraph 5.02.A of these Instructions to Bidders. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

5.03 *Other Site-related Documents*

- A. No other Site-related documents are available.

5.04 *Site Visit and Testing by Bidders*

- A. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.

5.05 *Owner's Safety Program*

- A. Site visits and work at the Site may be governed by an Owner safety program. If an Owner safety program exists, it will be noted in the Supplementary Conditions.

5.06 *Other Work at the Site*

- A. Reference is made to Article 8 of the Supplementary Conditions for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

**ARTICLE 6—BIDDER'S REPRESENTATIONS AND CERTIFICATIONS**

6.01 *Express Representations and Certifications in Bid Form, Agreement*

- A. The Bid Form that each Bidder will submit contains express representations regarding the Bidder's examination of Project documentation, Site visit, and preparation of the Bid, and certifications regarding lack of collusion or fraud in connection with the Bid. Bidder should review these representations and certifications, and assure that Bidder can make the representations and certifications in good faith, before executing and submitting its Bid.
- B. If Bidder is awarded the Contract, Bidder (as Contractor) will make similar express representations and certifications when it executes the Agreement.

**ARTICLE 7—INTERPRETATIONS AND ADDENDA**

- 7.01 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.
- 7.02 Bidder shall submit all questions about the meaning or intent of the Bidding Documents to Engineer in writing.
- 7.03 Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all registered plan holders. Questions received less than seven days prior to the date for opening of Bids may not be answered.
- 7.04 Only responses set forth in an Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the Contract Documents unless set forth in an Addendum that expressly modifies or supplements the Contract Documents.

**ARTICLE 8—BID SECURITY**

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of five percent (5%) of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions. Such Bid bond will be issued in the form included in the Bidding Documents.
- 8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract, furnished the required Contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract and furnish the required Contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited, in whole in the case of a penal sum bid bond, and to the extent of Owner's damages in the case of a damages-form bond. Such forfeiture will be Owner's exclusive remedy if Bidder defaults.
- 8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of 7 days after the Effective Date of the Contract or 46 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.
- 8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within 7 days after the Bid opening.

**ARTICLE 9—CONTRACT TIMES**

- 9.01 The number of days within which, or the dates by which, the Work is to be (a) substantially completed and (b) ready for final payment, and (c) Milestones (if any) are to be achieved, are set forth in the Agreement.

- 9.02 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

**ARTICLE 10—SUBSTITUTE AND “OR EQUAL” ITEMS**

- 10.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those “or-equal” or substitute or materials and equipment subsequently approved by Engineer prior to the submittal of Bids and identified by Addendum. No item of material or equipment will be considered by Engineer as an “or-equal” or substitute unless written request for approval has been submitted by Bidder and has been received by Engineer within 10 days of the issuance of the Advertisement for Bids or invitation to Bidders. Each such request must comply with the requirements of Paragraphs 7.05 and 7.06 of the General Conditions, and the review of the request will be governed by the principles in those paragraphs. The burden of proof of the merit of the proposed item is upon Bidder. Engineer’s decision of approval or disapproval of a proposed item will be final. If Engineer approves any such proposed item, such approval will be set forth in an Addendum issued to all registered Bidders. Bidders cannot rely upon approvals made in any other manner.
- 10.02 All prices that Bidder sets forth in its Bid will be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

**ARTICLE 11—SUBCONTRACTORS, SUPPLIERS, AND OTHERS**

- 11.01 A Bidder must be prepared to retain specific Subcontractors and Suppliers for the performance of the Work if required to do so by the Bidding Documents or in the Specifications. If a prospective Bidder objects to retaining any such Subcontractor or Supplier and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.
- 11.02 The Contractor shall perform, with its own organization and forces, work amounting to no less than 25% of the total contract cost. Refer to the provisions in the Supplementary Conditions 7.07.

**ARTICLE 12—PREPARATION OF BID**

- 12.01 The Bid Form is included with the Bidding Documents.
- A. All blanks on the Bid Form must be completed in ink and the Bid Form signed in ink. Erasures or alterations must be initialed in ink by the person signing the Bid Form. A Bid price must be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
  - B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”



- 12.02 If Bidder has obtained the Bidding Documents as Electronic Documents, then Bidder shall prepare its Bid on a paper copy of the Bid Form printed from the Electronic Documents version of the Bidding Documents. The printed copy of the Bid Form must be clearly legible, printed on 8½ inch by 11-inch paper and as closely identical in appearance to the Electronic Document version of the Bid Form as may be practical. The Owner reserves the right to accept Bid Forms which nominally vary in appearance from the original paper version of the Bid Form, providing that all required information and submittals are included with the Bid.
- 12.03 A Bid by a corporation must be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown.
- 12.04 A Bid by a partnership must 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.
- 12.05 A Bid by a limited liability company must be executed in the name of the firm by a member or other authorized person 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.
- 12.06 A Bid by an individual must show the Bidder's name and official address.
- 12.07 A Bid by a joint venture must be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture must have been formally established prior to submittal of a Bid, and the official address of the joint venture must be shown.
- 12.08 All names must be printed in ink below the signatures.
- 12.09 The Bid must contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.
- 12.10 Postal and e-mail addresses and telephone number for communications regarding the Bid must be shown.
- 12.11 The Bid must contain evidence of Bidder's authority to do business in the state where the Project is located, or Bidder must certify in writing that it will obtain such authority within the time for acceptance of Bids and attach such certification to the Bid.
- 12.12 If Bidder is required to be licensed to submit a Bid or perform the Work in the state where the Project is located, the Bid must contain evidence of Bidder's licensure, or Bidder must certify in writing that it will obtain such licensure within the time for acceptance of Bids and attach such certification to the Bid. Bidder's state contractor license number, if any, must also be shown on the Bid Form.
- 12.13 Funding of this project will utilize CDBG, which requires bidders to certify compliance with various special conditions as described in the Bidding Requirements and Contract Documents.

- A. Any bidder or equipment supplier whose firm or affiliate is listed in on the U.S. General Services Administration Excluded Parties List System web site at <http://www.epls.gov/> will be prohibited from the bidding process. Anyone submitting a bid who is listed on this web site will be determined to be a non-responsive bidder in accordance with 40 CFR Part 31. A contractor's Suspension/Debarment Certification is contained in the specifications; however, this certification should not preclude any interested party from ascertaining whether the certifying firm or person is actually on the GSA "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs".
- B. Bidders' DBE requirements for project including documentation of a) affirmative steps taken for DBE participation and b) the efforts to utilize and the resulting proposed utilization of certified DBEs. (There is a Disadvantaged Business Enterprise [DBE] requirement for the Contract. Project will involve certain goals regarding awarding of sub-agreements to small, minority and women-owned businesses, collectively known as Disadvantaged Business Enterprises (DBEs). Only work performed by certified DBEs can be counted toward the goals. In Iowa, DBEs must be certified through the Iowa Department of Transportation (IDOT). Information on certification requirements and a list of certified DBEs is on the IDOT website at [http://www.iowadot.gov/contracts/contracts\\_eeoaa.htm](http://www.iowadot.gov/contracts/contracts_eeoaa.htm).)

**ARTICLE 13—BASIS OF BID**

**13.01 Unit Price**

- A. Bidders must submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity", which Owner or its representative has set forth in the Bid Form, for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

**ARTICLE 14—SUBMITTAL OF BID**

- 14.01 The Bidding Documents include one separate unbound copy of the Bid Form, and, if required, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the other documents required to be submitted under the terms of Article 2 of the Bid Form and noted below:
  - A. Bidder shall certify its state or country of domicile by completing the address section of the Bid Form.

- B. Bidder shall complete and submit the Bidder Status Form with its bid as required by Iowa Administrative Code 875, Chapter 156.
  - C. CDBG forms:
    - 1. Intent to Comply with Section 3 Requirements.
- 14.02 A Bid must be received no later than the date and time prescribed and at the place indicated in the Advertisement or invitation to bid and must be enclosed in a plainly marked package 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 must be accompanied by the Bid security and other required documents. The Bid Security shall be filed in an envelope separate from the one containing the completed Bid Form and clearly marked "Bid Security". If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid must be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid must be addressed to the location designated in the Advertisement.
- 14.03 Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.
- 14.04 By submitting a bid, the bidder agrees that the Owner may copy the bid for purposes of facilitating the evaluation or to respond to request for public records. The bidder consents to such copying by submitting a bid and warrants that such copying will not violate the rights of any third parties.

**ARTICLE 15—MODIFICATION AND WITHDRAWAL OF BID**

- 15.01 An unopened Bid may be withdrawn by an appropriate document duly executed in the same 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. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 15.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 15.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 15.03 If within 24 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, the Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, the Bidder will be disqualified from further bidding on the Work.

**ARTICLE 16—OPENING OF BIDS**

- 16.01 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.

**ARTICLE 17—BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

17.01 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 security prior to the end of this period.

**ARTICLE 18—EVALUATION OF BIDS AND AWARD OF CONTRACT**

18.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner also reserves the right to waive all minor Bid informalities not involving price, time, or changes in the Work.

18.02 Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the interest of the Project to make an award to that Bidder.

18.03 If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, whether in the Bid itself or in a separate communication to Owner or Engineer, then Owner will reject the Bid as nonresponsive.

18.04 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.

18.05 If Owner awards the contract for the Work, such award will be to the Bidder whose Bid is in the best interest of the Project.

18.06 Evaluation of Bids

- A. In evaluating Bids, Owner will consider whether 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.
- B. For the determination of the apparent low Bidder when unit price bids are submitted, Bids will be compared on the basis of the total of the products of the estimated quantity of each item and unit price Bid for that item, together with any lump sum items.

18.07 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

- 18.08 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

**ARTICLE 19—BONDS AND INSURANCE**

- 19.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds, other required bonds (if any), and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by required bonds and insurance documentation.
- 19.02 Article 8, Bid Security, of these Instructions, addresses any requirements for providing bid bonds as part of the bidding process.

**ARTICLE 20—SIGNING OF AGREEMENT**

- 20.01 When Owner issues a Notice of Award to the Successful Bidder, it will be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Agreement and any bonds and insurance documentation required to be delivered by the Contract Documents to Owner. Within 10 days thereafter, Owner will deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.
- 20.02 No bid shall be considered binding upon the Owner until the contract is properly executed by both parties. Executed contracts may be subject to final approval of funding authorities.

**ARTICLE 21—SALES AND USE TAXES**

- 21.01 Owner is exempt from Iowa state sales and use taxes on materials and equipment to be incorporated in the Work. Said taxes must not be included in the Bid. Refer to Paragraph SC-7.10 of the Supplementary Conditions for additional information.

**ARTICLE 22—BIDDING PREFERENCE**

- 22.01 The State of Iowa, its agencies, and its political subdivisions, including cities, school districts and public utilities are required by Iowa Code Section 73A.21 to require a reciprocal resident bidder and resident labor force preference.
- 22.02 Nonresident bidders are advised that when a contract for a public improvement is to be awarded to the lowest responsible bidder that per Iowa law a resident bidder shall be allowed a preference over a nonresident bidder from a state or foreign country if that state or foreign country gives or requires any preference to bidders from that state or foreign country. Preferences include but not limited to any preference to bidders, the imposition of any type of labor force preference, or any other form of preferential treatment to bidders or laborers from that state or foreign country. The preference allowed shall be equal to the preference given or

required by the state or foreign country in which the nonresident bidder resides. In the instance of a resident labor force preference, a nonresident bidder shall apply the same resident labor force preference to a public improvement in this state as would be required in the construction of a public improvement by the state or foreign country in which the nonresident bidder is a resident.

22.03 Nonresident bidder is defined as a person or entity authorized to transact business and having a business address for transacting business outside the State of Iowa at which it is conducting and has conducted business.

22.04 Resident bidder is defined as a person or entity authorized to transact business and having a business address for transacting business within the State of Iowa at which it is conducting and has conducted business for a minimum of three years prior to the date of the first advertisement for the public improvement. If the nonresident bidder's state or foreign country defines resident bidder more stringently than the State of Iowa then the more stringent definition shall apply to the nonresident bidder's bid.

## **BID FORM**

Oelwein 2023 Plaza Park Improvements  
Oelwein, Iowa

CONTRACT NO. 20-CVN-023

### **Table of Contents**

Article 1 – Owner and Bidder

Article 2 – Attachments to this Bid

Article 3 – Basis of Bid – Lump Sum Bid

Article 4 – Time of Completion

Article 5 – Bidder’s Acknowledgements: Acceptance Period, Instructions,

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

**ARTICLE 1—OWNER AND BIDDER**

1.01 This Bid is submitted to:

**City Clerk  
City of Oelwein  
20 2nd Ave SW  
Oelwein, Iowa 50662**

1.02 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.

**ARTICLE 2—ATTACHMENTS TO THIS BID**

2.01 The following documents are submitted with and made a condition of this Bid:

- A. Required Bid security;
- B. Contractor's Iowa Registration No. or a written covenant to obtain such registration within the time for acceptance of Bids;
- C. Bidder Status Form;
- E. CDBG Form:
  - 1. Intent to Comply with Section 3 Requirements

**ARTICLE 3—BASIS OF BID—LUMP SUM BID AND UNIT PRICES**

3.01 *Unit Price Bids*

- A. Bidder will complete the Work in accordance with the Contract Documents for the following price(s):



**CITY OF OELWEIN  
PLAZA PARK IMPROVEMENTS**

Item No.	Item Description	Qty	Unit	Unit Cost	Item Total	Remarks
<b>DIVISION 1 - GENERAL</b>						
1	Traffic Control + Construction Fencing	1	LS	\$	\$	See notes on D1 - Demo Plan
2	Removal for Asphalt Pavement at Alley Edge	174	SY	\$	\$	Includes sawcutting
3	Removal of Concrete Planters	1	LS	\$	\$	Salvage and stockpile for Owner to relocate
4	Removal + Relocation of Fencing	1	LS	\$	\$	Salvage and reinstall as indicated
<b>DIVISION 2 - EARTHWORK</b>						
5	Topsoil, On-site, 4 Inch Depth (Strip, Salvage, Spread)	189	CY	\$	\$	
6	Compaction Testing	1	LS	\$	\$	
7	Erosion Control + SWPPP	1	LS	\$	\$	
<b>DIVISION 6 - UTILITIES</b>						
8	Sanitary Sewer Service	1	LS			See F1 Utility Plan for scope and details
9	Water Service	1	LS			See F1 Utility Plan for scope and details
10	Electrical Service	1	LS			Includes service to site, feeders to container panels and existing stage panel, receptacles in plant beds and service to festoon lights. See E1 Electrical Plan
11	Festoon Lighting	380	LF			Includes electric service, string lights, bulbs, support cables, and installation
12	Festoon Poles, Footings, and Connection Hardware	6	EA			
<b>DIVISION 7 - STREETS AND RELATED WORK</b>						
13	Pavement, PCC, 5 in Thickness - Walkways	648	SY	\$	\$	
14	Subbase, Modified, 6 Inch @ PCC Walks	154	CY	\$	\$	
15	Pavement, HMA, Full-Depth - Alley Transition	40	TON	\$	\$	Approx. 1,100 SF, figured 6" depth for transition
16	Curb and Gutter, 6 in Tall, 24 in Width, 6 in Thickness	310	LF	\$	\$	
<b>DIVISION 9 - SITE WORK AND LANDSCAPING</b>						
17	Seeding & Fertilizing, Type 1	0.50	AC	\$	\$	
18	Watering	1	LS	\$	\$	
18	Trees to be relocated	3	EA	\$	\$	
19	Deciduous Trees with Warranty	11	EA	\$	\$	1 year warranty with one replacement if necessary
20	Evergreen Trees with Warranty	4	EA	\$	\$	1 year warranty with one replacement if necessary
21	Deciduous and Evergreen Shrubs with Warranty	46	EA	\$	\$	1 year warranty with one replacement if necessary
22	Ornamental Grasses with Warranty	104	EA	\$	\$	1 year warranty with one replacement if necessary
23	Shredded Hardwood Mulch for Plant Beds	48	CY	\$	\$	4,330 SF at min. 3" depth
24	Installation of Reclaimed Limestone Blocks	31	EA	\$	\$	Limestone blocks to be picked up from in-town location and placed as indicated on layout plan and detail ?/L102
<b>DIVISION 11 - MISCELLANEOUS</b>						
24	Construction Staking	1	LS	\$	\$	
25	Mobilization	1	LS	\$	\$	
26	Concrete Washout Basin, Lined	1	LS	\$	\$	
<b>DIVISION 12 - SPECIAL PROVISIONS</b>						
27	4 Qty. Universal Restroom - Fabricated Container Building	1	LS	\$	\$	See A102 Restroom Container, Water heaters, HVAC units, freight, and foundations
28	Concessions + Storage - Fabricated Container Building	1	LS	\$	\$	See A101 Concession Container, Water heater, HVAC units, freight, and foundations. Cooler/s excluded
29	Shade Structure	1	LS	\$	\$	20' wide, 36' long - Includes freight
30	Shade Structure - Footings & Installation	1	LS	\$	\$	Per manufacturer requirements
	<i>Play Features</i>					
30	Play Mounds & Synthetic Turf Surfacing	1	LS	\$	\$	765 SF of Synthetic Turf on Mounds + 1,355 SF of play surfacing
31	Mushroom Steppers - 8 inch	2	EA	\$	\$	
32	Mushroom Steppers - 10 inch	3	EA	\$	\$	
33	Mushroom Steppers - 20 inch	3	EA	\$	\$	
34	Log Steppers - 8 inch	2	EA	\$	\$	
35	Log Steppers - 18 inch	2	EA	\$	\$	
36	Log Steppers - 28 inch	2	EA	\$	\$	
<b>BASE BID TOTAL</b>						

**TOTAL BASE BID AMOUNT \$ \_\_\_\_\_**

Bidder acknowledges that (1) each bid unit price includes an amount considered by bidder to be adequate to cover contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of bids, and final payment for all unit price bid items will be based on actual quantities, determined as provided in the contract documents.

All specified cash allowances are included in the price(s) set forth above and have been computed in accordance with Paragraph 13.02 of the General Conditions.

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3.02 *Adjustment Prices – (Not used)*

3.03 *Bid Alternates– (Not used)*

**ARTICLE 4—TIME OF COMPLETION**

4.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

4.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

**ARTICLE 5—BIDDER'S ACKNOWLEDGEMENTS: ACCEPTANCE PERIOD, INSTRUCTIONS, AND RECEIPT OF ADDENDA**

5.01 *Bid Acceptance Period*

A. This Bid will remain subject to acceptance for 45 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

5.02 *Instructions to Bidders*

A. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security.

5.03 *Receipt of Addenda*

A. Bidder hereby acknowledges receipt of the following Addenda:

**Addendum Number Addendum Date**

**ARTICLE 6—BIDDER'S REPRESENTATIONS AND CERTIFICATIONS**

6.01 *Bidder's Representations*

A. In submitting this Bid, Bidder represents the following:

1. Bidder has examined and carefully studied the Bidding Documents, including Addenda.

2. Bidder has visited the Site, conducted a thorough visual examination of the Site and

**EJCDC® C-410, Bid Form for Construction Contract.**

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adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Bidder has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Bidder has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, if selected as Contractor; and (c) Bidder's (Contractor's) safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Bidder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. 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.
9. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. The submission of this Bid constitutes an incontrovertible representation by Bidder that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

6.02 *Bidder's Certifications*

- A. The Bidder certifies the following:
1. 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 collusive agreement or rules of any group, association, organization, or corporation.
  2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
  3. Bidder has not solicited or induced any individual or entity to refrain from bidding.
  4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 8.02.A:
    - a. Corrupt practice means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.
    - b. Fraudulent practice means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
    - c. Collusive practice means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels.
    - d. Coercive practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

BIDDER hereby submits this Bid as set forth above:

Bidder: \_\_\_\_\_  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Date: \_\_\_\_\_  
*(typed or printed)*

*If Bidder is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.*

Attest: \_\_\_\_\_  
*(individual's signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Date: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_

Bidder's Contact:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

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

Email: \_\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_

Bidder's Contractor License No.: (if applicable) \_\_\_\_\_

## BID BOND (PENAL SUM FORM)

<b>Bidder</b> Name: Address <i>(principal place of business)</i> :	<b>Surety</b> Name: Address <i>(principal place of business)</i> :
<b>Owner</b> Name: <b>City of Oelwein</b> Address <i>(principal place of business)</i> : <b>20 Second Avenue SW</b> <b>Oelwein, IA 50662</b>	<b>Bid</b> Project <i>(name and location)</i> : <b>Oelwein 2023 Plaza Park Improvements</b>  Bid Due Date: <b>February 15, 2023</b>
<b>Bond</b> Penal Sum: Date of Bond:	
Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.	
Bidder	Surety
_____ <i>(Full formal name of Bidder)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature) (Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.</i>	

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. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs 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.
3. This obligation will 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, 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 of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of 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 total time for issuing Notice of Award including extensions does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will 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 the Bid due date.
7. Any suit or action under this Bond will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder must 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 Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will 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 will be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

# Bidder Status Form

## To be completed by all bidders

## Part A

Please answer "Yes" or "No" for each of the following:

- Yes  No My company is authorized to transact business in Iowa.  
*(To help you determine if your company is authorized, please review the worksheet on the next page).*
- Yes  No My company has an office to transact business in Iowa.
- Yes  No My company's office in Iowa is suitable for more than receiving mail, telephone calls, and e-mail.
- Yes  No My company has been conducting business in Iowa for at least 3 years prior to the first request for bids on this project.
- Yes  No My company is not a subsidiary of another business entity or my company is a subsidiary of another business entity that would qualify as a resident bidder in Iowa.

If you answered "Yes" for each question above, your company qualifies as a resident bidder. Please complete Parts B and D of this form.

If you answered "No" to one or more questions above, your company is a nonresident bidder. Please complete Parts C and D of this form.

## To be completed by resident bidders

## Part B

My company has maintained offices in Iowa during the past 3 years at the following addresses:

Dates: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ to \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Dates: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ to \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Dates: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ to \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Address: \_\_\_\_\_

*You may attach additional sheet(s) if needed.* City, State, Zip: \_\_\_\_\_

## To be completed by non-resident bidders

## Part C

1. Name of home state or foreign country reported to the Iowa Secretary of State:

\_\_\_\_\_

2. Does your company's home state or foreign country offer preferences to bidders who are residents?  Yes  No

3. If you answered "Yes" to question 2, identify each preference offered by your company's home state or foreign country and the appropriate legal citation.

\_\_\_\_\_

\_\_\_\_\_

*You may attach additional sheet(s) if needed.*

## To be completed by all bidders

## Part D

I certify that the statements made on this document are true and complete to the best of my knowledge and I know that my failure to provide accurate and truthful information may be a reason to reject my bid.

Firm Name: \_\_\_\_\_

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

**You must submit the completed form to the governmental body requesting bids  
per 875 Iowa Administrative Code Chapter 156.**

**This form has been approved by the Iowa Labor Commissioner.**



## Worksheet: Authorization to Transact Business

This worksheet may be used to help complete Part A of the Resident Bidder Status form. If at least one of the following describes your business, you are authorized to transact business in Iowa.

- Yes  No      My business is currently registered as a contractor with the Iowa Division of Labor.
- Yes  No      My business is a sole proprietorship and I am an Iowa resident for Iowa income tax purposes.
- Yes  No      My business is a general partnership or joint venture. More than 50 percent of the general partners or joint venture parties are residents of Iowa for Iowa income tax purposes.
- Yes  No      My business is an active corporation with the Iowa Secretary of State and has paid all fees required by the Secretary of State, has filed its most recent biennial report, and has not filed articles of dissolution.
- Yes  No      My business is a corporation whose articles of incorporation are filed in a state other than Iowa, the corporation has received a certificate of authority from the Iowa secretary of state, has filed its most recent biennial report with the secretary of state, and has neither received a certificate of withdrawal from the secretary of state nor had its authority revoked.
- Yes  No      My business is a limited liability partnership which has filed a statement of qualification in this state and the statement has not been canceled.
- Yes  No      My business is a limited liability partnership which has filed a statement of qualification in a state other than Iowa, has filed a statement of foreign qualification in Iowa and a statement of cancellation has not been filed.
- Yes  No      My business is a limited partnership or limited liability limited partnership which has filed a certificate of limited partnership in this state, and has not filed a statement of termination.
- Yes  No      My business is a limited partnership or a limited liability limited partnership whose certificate of limited partnership is filed in a state other than Iowa, the limited partnership or limited liability limited partnership has received notification from the Iowa secretary of state that the application for certificate of authority has been approved and no notice of cancellation has been filed by the limited partnership or the limited liability limited partnership.
- Yes  No      My business is a limited liability company whose certificate of organization is filed in Iowa and has not filed a statement of termination.
- Yes  No      My business is a limited liability company whose certificate of organization is filed in a state other than Iowa, has received a certificate of authority to transact business in Iowa and the certificate has not been revoked or canceled.

SURETY BOND NO. \_\_\_\_\_

**PERFORMANCE, PAYMENT AND MAINTENANCE BOND**

KNOW ALL BY THESE PRESENTS:

That we, \_\_\_\_\_, as Principal (hereinafter the "Contractor" or "Principal" and \_\_\_\_\_, as Surety are held and firmly bound unto the City of Oelwein, IA, as Obligee (hereinafter referred to as "the Owner"), and to all persons who may be injured by any breach of any of the conditions of this Bond in the penal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representatives and assigns, jointly or severally, firmly by these presents.

The conditions of the above obligations are such that whereas said Contractor entered into a contract with the Owner, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, hereinafter the "Contract") wherein said Contractor undertakes and agrees to construct the following described improvements:

Project entitled "Oelwein 2023 Plaza Park Improvements" and consisting of:  
Pedestrian walkways and curb lines, utility improvements, a container building for restrooms and another container building for concessions/storage, a play area with climbing boulders and rope nets, cantilevered shade canopy, festoon lighting, and landscape improvements.

and to faithfully perform all the terms and requirements of said Contract within the time therein specified, in a good and workmanlike manner, and in accordance with the Contract Documents.

It is expressly understood and agreed by the Contractor and Surety in this bond that the following provisions are a part of this Bond and are binding upon said Contractor and Surety, to-wit:

1. **PERFORMANCE:** The Contractor shall well and faithfully observe, perform, fulfill and abide by each and every covenant, condition and part of said Contract and Contract Documents, by reference made a part hereof, for the above referenced improvements, and shall indemnify and save harmless the Owner from all outlay and expense incurred by the Owner by reason of the Contractor's default of failure to perform as required. The Contractor shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. **PAYMENT:** The Contractor and the Surety on this Bond are hereby agreed to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the contract price which the Owner is required to retain until completion of the improvement, but the Contractor and Surety shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law. The Contractor and Surety hereby bind themselves to the obligations and conditions set forth in Chapter 573, Code of Iowa, which by this reference is made a part hereof as though fully set out herein.

3. MAINTENANCE: The Contractor and the Surety on this Bond hereby agree, at their own expense:
  - A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of two (2) years from the date of Substantial Completion under the Contract, by reason of defects in workmanship or materials used in construction of said work;
  - B. To keep all work in continuous good repair; and
  - C. To pay the Owner's reasonable costs of monitoring and inspection to assure that any defects are remedied, and to repay the Owner all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section. Contractor's and Surety's agreement herein made extends to defects in workmanship or materials not discovered or known to the Owner at the time such work was accepted
  
4. GENERAL: Every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:
  - A. To consent without notice to any extension of time to the Contractor in which to perform the Contract;
  - B. To consent without notice to any change in the Contract or Contract Documents, which thereby increases the total contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than twenty percent of the total contract price, and that this bond shall then be released as to such excess increase; and
  - C. To consent without notice that this Bond shall remain in full force and effect until the Contract is completed, whether completed within the specified contract period, within an extension thereof, or within a period of time after the contract period has elapsed and the liquidated damage penalty is being charged against the Contractor.  
The Contractor and every Surety on the bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:
  - D. That no provision of this Bond or of any other contract shall be valid which limits to less than five years after the acceptance of the work under the Contract the right to sue on this Bond.
  - E. That as used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the Owner including interest, benefits and overhead where applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorney's fees (including overhead expenses of the Owner's staff attorneys), and all costs and expenses of litigation as they are incurred by the Owner. It is intended the Contractor and Surety will defend and indemnify the Owner on all claims made against the Owner on account of Contractor's failure to perform as required in the Contract and Contract Documents, that all agreements and promises set forth in the Contract and Contract Documents, in approved change orders, and in this Bond will be fulfilled, and that the Owner will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.

In the event the Owner incurs any "outlay and expense" in defending itself with respect to any claim as to which the Contractor or Surety should have provided the defense, or in the enforcement of the promises given by the Contractor in the Contract, Contract Documents, or approved change orders, or in the enforcement of the promises given by the Contractor and Surety in this Bond, the Contractor and Surety agree that they will make the Owner whole for all such outlay and expense, provided that the Surety's obligation under this bond shall not exceed 125% of the penal sum of this bond.

In the event that any actions or proceedings are initiated with respect to this Bond, the parties agree that the venue thereof shall be Fayette County, State of Iowa. If legal action is required by the Owner to enforce the provisions of this Bond or to collect the monetary obligation incurring to the benefit of the Owner, the Contractor and the Surety agree, jointly and severally, to pay the Owner all outlay and expense incurred therefore by the Owner. All rights, powers, and remedies of the Owner hereunder shall be cumulative and not alternative and shall be in addition to Surety for any amount guaranteed hereunder whether action is brought against the Contractor or whether Contractor is joined in any such action or actions or not.

NOW THEREFORE, the condition of this obligation is such that if said Principal shall faithfully perform all the promises of the Principal, as set forth and provided in the Contract, in the Contract Documents, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

When a word, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, the Contract, or the Contract Documents; second, if not defined in the Bond, Contract, or Contract Documents, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and fourth, if it has no generally accepted meaning in the construction industry, it shall be interpreted or construed according to its common or customary usage.

Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract and Contract Documents are hereby made a part of this Bond.

(Remainder of Page Left Blank Intentionally)

Witness our hands, in triplicate, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Surety Countersigned By:**

\_\_\_\_\_  
Signature of Iowa Resident Commission Agent as  
Prescribed by Chapter 515.52-57, Iowa Code.  
(Require only if Attorney-in-Fact is not also an Iowa  
Resident Commission Agent).

\_\_\_\_\_  
Name of Resident Commission Agent

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

\_\_\_\_\_  
Company Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Company Telephone Number

**PRINCIPAL:**

\_\_\_\_\_  
Contractor

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

\_\_\_\_\_  
Title

**SURETY:**

\_\_\_\_\_  
Surety Company

By: \_\_\_\_\_  
Signature Attorney-in-Fact Officer

\_\_\_\_\_  
Name of Attorney-in-Fact Officer

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

\_\_\_\_\_  
Company Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Company Telephone Number

**NOTE: All signatures on this performance, maintenance & payment bond must be original signatures in ink; copies or facsimile of any signature will not be accepted. This bond must be sealed with the Surety's raised, embossing seal. The Certificate or Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.**

SURETY BOND NO. \_\_\_\_\_

**PERFORMANCE, PAYMENT AND MAINTENANCE BOND**

KNOW ALL BY THESE PRESENTS:

That we, \_\_\_\_\_, as Principal (hereinafter the "Contractor" or "Principal" and \_\_\_\_\_, as Surety are held and firmly bound unto the City of Oelwein, IA, as Obligee (hereinafter referred to as "the Owner"), and to all persons who may be injured by any breach of any of the conditions of this Bond in the penal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representatives and assigns, jointly or severally, firmly by these presents.

The conditions of the above obligations are such that whereas said Contractor entered into a contract with the Owner, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, hereinafter the "Contract") wherein said Contractor undertakes and agrees to construct the following described improvements:

Project entitled "Oelwein 2023 Plaza Park Improvements" and consisting of:  
Pedestrian walkways and curb lines, utility improvements, a container building for restrooms and another container building for concessions/storage, a play area with climbing boulders and rope nets, cantilevered shade canopy, festoon lighting, and landscape improvements.

and to faithfully perform all the terms and requirements of said Contract within the time therein specified, in a good and workmanlike manner, and in accordance with the Contract Documents.

It is expressly understood and agreed by the Contractor and Surety in this bond that the following provisions are a part of this Bond and are binding upon said Contractor and Surety, to-wit:

1. **PERFORMANCE:** The Contractor shall well and faithfully observe, perform, fulfill and abide by each and every covenant, condition and part of said Contract and Contract Documents, by reference made a part hereof, for the above referenced improvements, and shall indemnify and save harmless the Owner from all outlay and expense incurred by the Owner by reason of the Contractor's default of failure to perform as required. The Contractor shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. **PAYMENT:** The Contractor and the Surety on this Bond are hereby agreed to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the contract price which the Owner is required to retain until completion of the improvement, but the Contractor and Surety shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law. The Contractor and Surety hereby bind themselves to the obligations and conditions set forth in Chapter 573, Code of Iowa, which by this reference is made a part hereof as though fully set out herein.

3. MAINTENANCE: The Contractor and the Surety on this Bond hereby agree, at their own expense:
  - A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of two (2) years from the date of Substantial Completion under the Contract, by reason of defects in workmanship or materials used in construction of said work;
  - B. To keep all work in continuous good repair; and
  - C. To pay the Owner's reasonable costs of monitoring and inspection to assure that any defects are remedied, and to repay the Owner all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section. Contractor's and Surety's agreement herein made extends to defects in workmanship or materials not discovered or known to the Owner at the time such work was accepted
  
4. GENERAL: Every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:
  - A. To consent without notice to any extension of time to the Contractor in which to perform the Contract;
  - B. To consent without notice to any change in the Contract or Contract Documents, which thereby increases the total contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than twenty percent of the total contract price, and that this bond shall then be released as to such excess increase; and
  - C. To consent without notice that this Bond shall remain in full force and effect until the Contract is completed, whether completed within the specified contract period, within an extension thereof, or within a period of time after the contract period has elapsed and the liquidated damage penalty is being charged against the Contractor.  
The Contractor and every Surety on the bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:
  - D. That no provision of this Bond or of any other contract shall be valid which limits to less than five years after the acceptance of the work under the Contract the right to sue on this Bond.
  - E. That as used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the Owner including interest, benefits and overhead where applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorney's fees (including overhead expenses of the Owner's staff attorneys), and all costs and expenses of litigation as they are incurred by the Owner. It is intended the Contractor and Surety will defend and indemnify the Owner on all claims made against the Owner on account of Contractor's failure to perform as required in the Contract and Contract Documents, that all agreements and promises set forth in the Contract and Contract Documents, in approved change orders, and in this Bond will be fulfilled, and that the Owner will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.

In the event the Owner incurs any "outlay and expense" in defending itself with respect to any claim as to which the Contractor or Surety should have provided the defense, or in the enforcement of the promises given by the Contractor in the Contract, Contract Documents, or approved change orders, or in the enforcement of the promises given by the Contractor and Surety in this Bond, the Contractor and Surety agree that they will make the Owner whole for all such outlay and expense, provided that the Surety's obligation under this bond shall not exceed 125% of the penal sum of this bond.

In the event that any actions or proceedings are initiated with respect to this Bond, the parties agree that the venue thereof shall be Fayette County, State of Iowa. If legal action is required by the Owner to enforce the provisions of this Bond or to collect the monetary obligation incurring to the benefit of the Owner, the Contractor and the Surety agree, jointly and severally, to pay the Owner all outlay and expense incurred therefore by the Owner. All rights, powers, and remedies of the Owner hereunder shall be cumulative and not alternative and shall be in addition to Surety for any amount guaranteed hereunder whether action is brought against the Contractor or whether Contractor is joined in any such action or actions or not.

NOW THEREFORE, the condition of this obligation is such that if said Principal shall faithfully perform all the promises of the Principal, as set forth and provided in the Contract, in the Contract Documents, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

When a word, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, the Contract, or the Contract Documents; second, if not defined in the Bond, Contract, or Contract Documents, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and fourth, if it has no generally accepted meaning in the construction industry, it shall be interpreted or construed according to its common or customary usage.

Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract and Contract Documents are hereby made a part of this Bond.

(Remainder of Page Left Blank Intentionally)



Witness our hands, in triplicate, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Surety Countersigned By:**

\_\_\_\_\_  
Signature of Iowa Resident Commission Agent as  
Prescribed by Chapter 515.52-57, Iowa Code.  
(Require only if Attorney-in-Fact is not also an Iowa  
Resident Commission Agent).

\_\_\_\_\_  
Name of Resident Commission Agent

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

\_\_\_\_\_  
Company Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Company Telephone Number

**PRINCIPAL:**

\_\_\_\_\_  
Contractor

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

\_\_\_\_\_  
Title

**SURETY:**

\_\_\_\_\_  
Surety Company

By: \_\_\_\_\_  
Signature Attorney-in-Fact Officer

\_\_\_\_\_  
Name of Attorney-in-Fact Officer

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

\_\_\_\_\_  
Company Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Company Telephone Number

**NOTE: All signatures on this performance, maintenance & payment bond must be original signatures in ink; copies or facsimile of any signature will not be accepted. This bond must be sealed with the Surety's raised, embossing seal. The Certificate or Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.**

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

**STANDARD GENERAL CONDITIONS  
OF THE CONSTRUCTION CONTRACT**

**Prepared By**



**Endorsed By**



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National Society of Professional Engineers  
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**GUIDELINES FOR USE OF EJCDC® C-700,  
STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT**

**1.0 PURPOSE AND INTENDED USE OF THE DOCUMENT**

EJCDC® C-700, Standard General Conditions of the Construction Contract (2018), is the foundation document for the EJCDC Construction Series. The General Conditions define the basic rights, responsibilities, risk allocations, and contractual relationship of the Owner and Contractor, and establish how the Contract is to be administered.

**2.0 OTHER DOCUMENTS**

EJCDC documents are intended to be used as a system and changes in one EJCDC document may require a corresponding change in other documents. Other EJCDC documents may also serve as a reference to provide insight or guidance for the preparation of this document.

These General Conditions have been prepared for use with either EJCDC® C-520, Agreement Between Owner and Contractor for Construction Contract (Stipulated Price), or EJCDC® C-525, Agreement Between Owner and Contractor for Construction Contract (Cost-Plus-Fee) (2018 Editions). The provisions of the General Conditions and the Agreement are interrelated, and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC® C-800, Supplementary Conditions of the Construction Contract (2018).

The full EJCDC Construction series of documents is discussed in the EJCDC® C-001, Commentary on the 2018 EJCDC Construction Documents (2018).

**3.0 ORGANIZATION OF INFORMATION**

All parties involved in a construction project benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location; doing so frequently leads to confusion and unanticipated legal consequences. Careful attention should be given to the guidance provided in EJCDC® N-122/AIA® A521, Uniform Location of Subject Matter (2012 Edition) when preparing documents. EJCDC® N-122/AIA® A521 is available at no charge from the EJCDC website, [www.ejcdc.org](http://www.ejcdc.org), and from the websites of EJCDC's sponsoring organizations.

If CSI MasterFormat™ is used for organizing the Project Manual, consult CSI MasterFormat™ for the appropriate document number (e.g., under 00 11 00, Advertisements and Invitations), and accordingly number the document and its pages.

**4.0 EDITING THIS DOCUMENT**

Remove these Guidelines for Use. Some users may also prefer to remove the two cover pages.

Although it is permissible to revise the Standard EJCDC Text of C-700 (the content beginning at page 1 and continuing to the end), it is common practice to leave the Standard EJCDC Text of C-700 intact and unaltered, with modifications and supplementation of C-700's provisions set forth in EJCDC® C-800, Supplementary Conditions of the Construction Contract (2018). If the Standard Text itself is revised, the user must comply with the terms of the License Agreement, Paragraph 4.0, Document-Specific Provisions, concerning the tracking or highlighting of revisions. The following is a summary of the relevant License Agreement provisions:

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2. During the drafting or negotiating process for C-700, it is important that the two contracting parties are both aware of any changes that have been made to the Standard EJCDC Text. Thus, if a draft or version of C-700 purports to be or appears to be an EJCDC document, the user must plainly show all changes to the Standard EJCDC Text, using “Track Changes” (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.
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This document is subject to the terms and conditions of the **License Agreement, 2018 EJCDC® Construction Series Documents**. A copy of the License Agreement was furnished at the time of purchase of this document, and is available for review at [www.ejcdc.org](http://www.ejcdc.org) and the websites of EJCDC’s sponsoring organizations.

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

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

- requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
  - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
  - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
  12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
  13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
  14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
  15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
  16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
  17. *Cost of the Work*—See Paragraph 13.01 for definition.
  18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
  19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
  20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
  21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

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

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

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
  - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

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



- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2—PRELIMINARY MATTERS**

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

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

### **2.02 *Copies of Documents***

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

### **2.03 *Before Starting Construction***

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  - 2. a preliminary Schedule of Submittals; and
  - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

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

## ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 *Intent*

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

### 3.02 *Reference Standards*

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

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

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

#### B. *Resolving Discrepancies*

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

### 3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

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

## **ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.01 *Commencement of Contract Times; Notice to Proceed*

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

### 4.02 *Starting the Work*

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

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
  - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment



and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

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

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

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

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
  - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
  - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
- a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
  - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
  - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
  2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
  3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
  4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
  - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
  - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
  4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

#### 5.06 *Hazardous Environmental Conditions at Site*

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

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6—BONDS AND INSURANCE**

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

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by



Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
  - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
  - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

#### 6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

#### 6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
  2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

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

**ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

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

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

#### 7.04 *Services, Materials, and Equipment*

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

#### 7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  - 3) has a proven record of performance and availability of responsive service; and
  - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 *Substitutes*

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
  - a. will certify that the proposed substitute item will:
    - 1) perform adequately the functions and achieve the results called for by the general design;
    - 2) be similar in substance to the item specified; and
    - 3) be suited to the same use as the item specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.



- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

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

#### 7.09 *Permits*

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

#### 7.10 *Taxes*

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

#### 7.11 *Laws and Regulations*

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

#### 7.12 *Record Documents*

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

### 7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

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

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
  2. *Samples*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
  3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

*D. Resubmittal Procedures for Shop Drawings and Samples*

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

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

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
  - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
  - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
  - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

**7.17 Contractor's General Warranty and Guarantee**

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
  - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
  - 1. Observations by Engineer;
  - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
  - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  - 4. Use or occupancy of the Work or any part thereof by Owner;
  - 5. Any review and approval of a Shop Drawing or Sample submittal;
  - 6. The issuance of a notice of acceptability by Engineer;
  - 7. The end of the correction period established in Paragraph 15.08;
  - 8. Any inspection, test, or approval by others; or



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

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

## **ARTICLE 8—OTHER WORK AT THE SITE**

### **8.01 *Other Work***

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

#### 8.02 *Coordination*

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

#### 8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
  - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9—OWNER'S RESPONSIBILITIES**

### **9.01 *Communications to Contractor***

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

### **9.02 *Replacement of Engineer***

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

### **9.03 *Furnish Data***

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

### **9.04 *Pay When Due***

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

- 9.05 *Lands and Easements; Reports, Tests, and Drawings*
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
  - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
  - C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 *Insurance*
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 *Change Orders*
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 *Inspections, Tests, and Approvals*
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 *Limitations on Owner's Responsibilities*
- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 9.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.
- 9.11 *Evidence of Financial Arrangements*
- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).
- 9.12 *Safety Programs*
- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
  - B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

### 10.01 *Owner's Representative*

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

### 10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 10.03 *Resident Project Representative*

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

### 10.04 *Engineer's Authority*

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

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

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

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

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

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

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

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

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

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

## ARTICLE 11—CHANGES TO THE CONTRACT

### 11.01 *Amending and Supplementing the Contract*

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

### 11.02 *Change Orders*

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

### 11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.



- B. If Owner has issued a Work Change Directive and:
  - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 *Field Orders*

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

#### 11.05 *Owner-Authorized Changes in the Work*

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

#### 11.06 *Unauthorized Changes in the Work*

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

#### 11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
    - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
    - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
    - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

#### 11.08 *Change of Contract Times*

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

#### 11.09 *Change Proposals*

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

#### B. *Change Proposal Procedures*

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

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

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 *Notification to Surety*

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

### **ARTICLE 12—CLAIMS**

#### 12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
  1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
  4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

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

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

### **13.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
  4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
  5. Other costs consisting of the following:
    - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
    - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

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

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

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

D. *Contractor's Fee*

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



Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

### 13.02 Allowances

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

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

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

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

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

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

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

#### 14.03 *Defective Work*

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

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

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

#### 14.05 *Uncovering Work*

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

#### 14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

**14.07 Owner May Correct Defective Work**

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

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

**15.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
  - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

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

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
  - a. the Work is defective, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
  - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

**D. *Payment Becomes Due***

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

**E. *Reductions in Payment by Owner***

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

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

#### 15.02 *Contractor's Warranty of Title*

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

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time



submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

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

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

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

#### 15.05 *Final Inspection*

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

#### 15.06 *Final Payment*

##### A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such adjacent areas;
  - 2. correct such defective Work;
  - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

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

## **ARTICLE 16—SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

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

### **16.02 *Owner May Terminate for Cause***

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

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

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

#### 16.03 *Owner May Terminate for Convenience*

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

#### 16.04 *Contractor May Stop Work or Terminate*

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

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

### **17.01 *Methods and Procedures***

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

## **ARTICLE 18—MISCELLANEOUS**

### **18.01 *Giving Notice***

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

### **18.02 *Computation of Times***

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

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

18.10 *Headings*

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





# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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

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

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

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

SC-1.01.A. Add the following sentences after the first sentence in the definition of the term "Bid":

The Bid shall mean the entire submittal including the bid form and all attachments required as listed on the Bid Form and all other attachments and supplemental documents submitted at the time of bidding. The terms "bid", "proposal", and "offer" may be used interchangeably in the bidding documents.

SC-1.01.A. Delete Paragraph 1.01.A.22. in its entirety and insert the following in its place:

22. *Engineer* – Confluence, Inc., 900 2nd Street SE, Suite 104, Cedar Rapids, IA 52401  
Ph. (319) 409-5401

SC-1.01.A. Delete subparagraph 1.01.A.33 in its entirety and insert the following in its place:

33. *Resident Project Representative* – The authorized representative of the Engineer who may be assigned, either part-time or full-time, to the site or any part thereof. Refer to the attachment entitled "Attachment A – Duties, Responsibilities, and Limitations of Authority of Resident Project Representative".

## ARTICLE 2—PRELIMINARY MATTERS (NOT MODIFIED)

## ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 *Intent*

SC-3.01.B Add the following language at the end of Paragraph 3.01B:

Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result shall be provided whether or not specifically called for, at no additional cost to Owner.

SC-3.01 Add the following two subparagraphs after 3.01.G:

- H. The Specifications may vary in form, format and style. Some specification sections are written in varying degrees of streamlined or declarative style and some sections may be relatively narrative by comparison. Omissions of such words and phrases as "the Contractor shall," "in conformity with," "as shown," or "as specified" are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making claims for extra Work.
- I. The cross referencing of specification sections under the subparagraph heading "Related Sections include but are not necessarily limited to:" and elsewhere within each specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not the cross referencing is provided in each section or whether or not the cross referencing is complete.
- J. The Specifications as a whole will govern the construction of the entire Work. The applicable provisions thereof will govern Work to be performed under each section of the contract.

#### **ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

##### **4.01 *Commencement of Contract Time; Notice to Proceed***

SC-4.01.A Replace the third sentence with the following sentence:

In no event will the Contract Times commence to run later than the ninetieth (90th) day after the day of Bid opening or the thirtieth (30<sup>th</sup>) day after the Effective Date of the Contract, whichever date is earlier.

##### **4.03 Reference Points**

SC-4.03.A. Amend the first sentence of Paragraph 4.03.A. to read as follows:

Owner shall provide engineering surveys to establish two (2) reference points at the site for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work.

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

##### **5.03 *Subsurface and Physical Conditions***

SC-5.03.D Add the following subparagraphs under Paragraph 5.03.D.4:

- 5. Test hole information represents subsurface characteristics to the extent indicated, and only for the point location of the test hole. Contractor shall make his own interpretation of the

character and condition of the materials which will be encountered between test hole locations.

6. The information provided is not guaranteed to be more than a general indication of the physical conditions likely to be found.

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

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

Report Title	Date of Report	Technical Data
none		

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
none		

- G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents at **the office of the Engineer** during regular business hours, or may request copies from Engineer.

#### 5.05 *Underground Facilities*

SC-5.05.A. Add the following new paragraph immediately after Paragraph 5.05.A.5.:

6. Generally, service connection locations are intentionally not indicated on the Drawings. The Contractor shall have full responsibility for discovery of these existing Underground Facilities prior to excavating or trenching by contacting all local utilities and by prospecting. The cost for performing this work shall be included in the Contract Price.

#### 5.06 *Hazardous Environmental Conditions*

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

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

Report Title	Date of Report	Technical Data
none		[Identify Technical Data]

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

Drawings Title	Date of Drawings	Technical Data
none		<b>[Identify Technical Data]</b>

## ARTICLE 6—BONDS AND INSURANCE

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

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

1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be two (2) years after Substantial Completion.
2. Maintenance Bond. Contractor shall furnish a Maintenance Bond in an amount at least equal to the Contract Price, warranting against defects in materials and workmanship for a period of not less than two (2) years from the date of Substantial Completion.
3. The maintenance bond must be issued by the same surety that issues the performance bond required under Paragraph 6.01.A of the General Conditions.

### 6.02 *Insurance—General Provisions*

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

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

SC-6.02 Amend the first sense of Paragraph 6.02.N:

All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused, until at least 30 days prior written notice has been given to the purchasing policyholder.

### 6.03 *Contractor’s Insurance*

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

- D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following:

**City of Oelwein**

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

<b>Workers' Compensation and Related Policies</b>	<b>Policy limits of not less than:</b>
<b>Workers' Compensation</b>	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
<b>Jones Act (if applicable)</b>	
Bodily injury by accident—each accident	\$1,000,000
Bodily injury by disease—aggregate	\$1,000,000
<b>Employer's Liability</b>	
Each accident	\$1,000,000
Each employee	\$1,000,000
Policy limit	\$1,000,000
<b>Stop-gap Liability Coverage</b>	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	\$500,000

- F. *Commercial General Liability—Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
  2. damages insured by reasonably available personal injury liability coverage, and
  3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content*: Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
    - a. Such insurance must be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Blanket contractual liability coverage, including but not limited to coverage of Contractor’s contractual indemnity obligations in Paragraph 7.18.
  3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  4. Underground, explosion, and collapse coverage.
  5. Personal injury coverage.
  6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.
- H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of “insured contract” (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
  4. Any exclusion of coverage relating to earth subsidence or movement.
  5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability (other than worker’s compensation).
  6. Any limitation or exclusion based on the nature of Contractor’s work.
  7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
- I. *Commercial General Liability—Minimum Policy Limits*

<b>Commercial General Liability</b>	<b>Policy limits of not less than:</b>
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000

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



<b>Automobile Liability</b>	<b>Policy limits of not less than:</b>
<b>Bodily Injury</b>	
Each Person	\$1,000,000
Each Accident	\$1,000,000
<b>Property Damage</b>	
Each Accident	\$1,000,000
<b>[or]</b>	
<b>Combined Single Limit</b>	
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000

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

<b>Excess or Umbrella Liability</b>	<b>Policy limits of not less than:</b>
Each Occurrence	\$4,000,000
General Aggregate	\$4,000,000

- L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer’s liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy’s policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of **\$10,000** after accounting for partial attribution of its limits to underlying policies, as allowed above.
- M. *Contractor’s Pollution Liability Insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor’s operations and completed operations. This insurance must be maintained for no less than three years after final completion.

<b>Contractor’s Pollution Liability</b>	<b>Policy limits of not less than:</b>
Each Occurrence/Claim	\$10,000
General Aggregate	\$10,000

- N. *Contractor’s Professional Liability Insurance:* If Contractor will provide or furnish professional services under this *Contract*, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The

retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

<b>Contractor’s Professional Liability</b>	<b>Policy limits of not less than:</b>
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- P. *Unmanned Aerial Vehicle Liability Insurance:* If Contractor uses unmanned aerial vehicles (UAV—commonly referred to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor’s compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

<b>Unmanned Aerial Vehicle Liability Insurance</b>	<b>Policy limits of not less than:</b>
Each Claim	\$1,000,000
General Aggregate	\$2,000,000

- Q. *Other Required Insurance:* **[Here list additional types and amounts of insurance that Contractor is required to carry.]**

6.04 *Builder’s Risk and Other Property Insurance*

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

- F. *Builder’s Risk Requirements:* The builder’s risk insurance must:
1. be written on a builder’s risk “all risk” policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).
    - a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
    - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder’s risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.
  2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar

nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.

3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of contractors, engineers, and architects).
4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier). If this coverage is subject to a sublimit, such sublimit will be a minimum of \$10,000.
5. extend to cover damage or loss to insured property while in transit. If this coverage is subject to a sublimit, such sublimit will be a minimum of \$300,000.
6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
8. include performance/hot testing and start-up, if applicable.
9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
10. include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds." In addition to Owner, Contractor, and Subcontractors of every tier, include as insureds the following:
  - a. City of Oelwein, Iowa
11. include, in addition to the Contract Price amount, the value of the following equipment and materials to be installed by the Contractor but furnished by the Owner or third parties:
  - a. **none**
12. If debris removal in connection with repair or replacement of insured property is subject to a coverage sublimit, such sublimit will be a minimum of **\$25,000**

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

- H. *Builder's Risk and Other Property Insurance Deductibles*: The purchaser of any required builder's risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.

1. The builder's risk policy (or if applicable the installation floater) will be subject to a deductible amount of no more than \$10,000 for direct physical loss in any one occurrence.

## **ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

### *7.02 Supervision and Superintendence*

SC-7.02.B Add the following subparagraph under SC-7.02.B:

1. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of the Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

### *7.03 Labor; Working Hours*

SC-7.03.C Replace the entire paragraph with the following:

- C. In the absence of any Federal, state or local laws, regulations or covenants, the Contractor may conduct its performance of the Work at the Contractor's sole discretion, except that the cost of any overtime pay or other expense incurred by Owner for Resident Project Representative, Owner's Representative, and construction observation services, occasioned by the conduct of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day, shall be reimbursed to the Owner by the Contractor.
  1. No Work shall be done between 6:00pm and 7:00am without permission of Owner. However, emergency work may be done without prior permission.
  2. Night Work may be undertaken as a regular procedure with the permission of Owner; such permission, however, may be revoked at any time by Owner if Contractor fails to maintain adequate equipment and supervision for the proper prosecution and control of the Work at night.

### *7.04 Services, Materials, and Equipment*

SC-7.04.A. Add the following paragraph under SC-7.04.A:

1. Where the Work requires equipment be furnished, due to the lack of standardization of equipment as produced by the various manufacturers, it may become necessary to make minor modifications in the structures, buildings, piping, mechanical work, electrical work, accessories, controls, or other work, to accommodate the particular equipment offered. All such modifications shall be subject to approval by Engineer and shall be made by Contractor at no additional cost to Owner.

SC-7.04. Add the following paragraph after SC-7.04.C:

- D. All items of standard equipment shall be the latest model at the time of bid, unless otherwise specified.

## 7.05 *“Or Equals”*

SC-7.05. Add the following subparagraph after SC-7.05.E:

- F. Certain items of equipment or supplies may be designated as Base Bid Equipment and proposed substitutions require pre-bid approval by the Engineer. Where the specification or description includes the phrase “pre-approved equivalent”, “pre-approved equal”, or similar language, only the specified brand of equipment or the specific supplier that is indicated in the specification or that is pre-approved during the bidding period will be allowed.

## 7.07 *Concerning Subcontractors and Suppliers*

SC-7.07. Delete Paragraph 7.07.D and replace with the following:

- D. Within ten days after the Effective Date of the Agreement, Contractor shall submit to Engineer for review a Subcontractors and Supplier List, with particular information regarding the qualifications of each Subcontractor identified by the Contractor as proposed to perform more than ten percent of the Work. Absent objection by the Owner prior to Commencement of Contract Times, the use of Subcontractors listed by the Contractor will be required in the performance of the work. The Owner shall be notified in writing of any proposed substitute Subcontractor for consideration following the Commencement of Contract Times.

## 7.09 *Permits*

SC-7.09.A. Add the following subparagraph under paragraph 7.09.A:

1. The Owner will obtain and pay for the necessary Iowa Department of Natural Resources Water Construction Permit.
2. The Owner shall pay all costs associated with obtaining the required NPDES Storm Water Permit. The Contractor shall sign as a co-permittee for the NPDES Storm Water Permit.
3. The Contractor shall obtain all local required building permits, but the Owner will waive all permit fees, if any.

## 7.10 *Taxes*

SC-7.10 Add the following new paragraphs immediately after Paragraph 7.10.A:

- B. Owner is exempt from Iowa state sales taxes and local option sales taxes on all materials and equipment to be incorporated in the work. Owner’s exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.
- C. The Contractor shall provide a listing to the City identifying all appropriate subcontractors qualified for use of the tax exemption certificate. The listing shall include the Federal Employer Identification Number (FEIN) for the Contractor and each Subcontractor.
- D. The Owner will complete an on-line application to register this Contract with the Iowa Department of Revenue and Finance and will furnish the Contractor and all listed subcontractors with an authorization letter and Tax Exemption Certificate for use in the purchase of supplies and materials to be incorporated into the Work. The Contractor and

subcontractors may make copies of the tax exemption certificates and authorization letters and provide a copy to each supplier providing construction materials to be incorporated into this project.

- E. The Contractor shall be responsible for complying with all applicable provisions of Iowa Code Section 422.

## 7.11 *Laws and Regulations*

SC-7.11 Add the following new subparagraphs immediately after Paragraph 7.11.A:

1. Federal Requirements. Specific Federal requirements shall be as specified herein and in the attachments at the end of the Supplementary Conditions.
2. Safety and Health Regulations. OSHA "Safety and Health Regulations for Construction", Chapter XVII of Title 29, CFR Part 1926, shall apply to Work under this Contract. The U.S. Department of Labor will be responsible for compliance review and enforcement of the regulations.
3. Employment Requirements. Employment requirements shall be as specified herein and in the attachments at the end of these Supplementary Conditions.
4. Nondiscrimination in Employment. Contractor and Subcontractor shall not discriminate in employment practices and shall comply with Labor Standards Provisions for Federally Assisted Construction Contracts (EPA Form included in the Contract Documents).

Contractor acknowledges that it understands and shall be bound by the equal opportunity requirements of EPA regulations (40 CFR Part B, particularly Section 8.4 [b]), which shall be applicable throughout the performance of Work under this Contract. Contractor shall similarly bind contractually each Subcontractor. Contractor shall engage in affirmative action directed at promoting and ensuring equal employment opportunity in the workforce used under the Contract and Contractor shall require contractually the same effort of all Subcontractors whose subcontracts exceed \$10,000). "Affirmative action" as used herein shall constitute a good faith effort to achieve and maintain that amount of minority employment in the onsite workforce used on the Project which corresponds, for each trade used, to the minority population in the serving labor market area from which workers are reasonably available for hire for the Project.

5. Nonsegregated Facilities. The following requirements apply to this Contract:

### NOTICE TO PROSPECTIVE FEDERALLY-ASSISTED-CONSTRUCTION CONTRACTORS

A Certification of Nonsegregated Facilities as required by May 9, 1967, order (33 F.R. 7808, May 28, 1968) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a federally-assisted-construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

Contractors receiving federally-assisted-construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of the following notice to prospective Subcontractors for

supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause:

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES**

A Certification of Nonsegregated Facilities as required by the May 9, 1967, order (33 F.R. 7808, May 28, 1968) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective Subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

6. Violating Facilities Prohibition. The Contractor shall comply with 40 CFR 31.36(i)(12) which prohibits the procurement of materials or equipment from facilities on the EPA "List of Violating Facilities". Contractor is also prohibited from using entities listed on GSA's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs".
7. Buy American Provision. The Buy American Provision of Public Law 95-217 (Section 215 of Public Law 92-500 as amended), as implemented by EPA regulations and guidance, generally requires that preference be given to the purchase of domestic construction material in the performance of this Contract.
8. Archaeological Deposits. If, during the course of construction, evidence of deposits of historical or archaeological interest is found, Contractor shall cease operations and immediately notify the Owner, who shall immediately notify the Regional Office of the Iowa Department of Natural Resources and the State Historic Preservation Office (SHPO). Once SHPO has been informed of the discovery and excavation, activities will cease until an assessment has been made by a qualified archaeologist. In the event that human remains are discovered excavation activities will cease, skeletal remains associated burial goods will not be removed from the site or otherwise disturbed, and local authorities and the Director of Burials at the Office of the State Archaeologist will be contacted immediately. No further disturbance of the deposits shall occur until Contractor has been notified by Owner that Contractor may proceed. Owner will issue a Notice to Proceed only after the state official has surveyed the find and made a determination to the Iowa Department of Natural Resources and Owner. Compensation to Contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or Change Order provisions of the Contract Documents. (Reference: 80 Stat 915, 16 USC 470, and Executive Order No. 11593 of May 31, 1971.) (36 CFR Part 800.13)
9. Clean Air Act. Contractor shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act including, but not limited to, Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 (U.S.C. 1368) Executive Order 11738, and EPA regulations (40 CFR Part 15).

10. Records. Contractor shall retain all required records for three (3) years after final payment and all other pending matters are closed. All records shall be preserved and made available to authorized representatives of the Owner, Department of Natural Resources, USEPA, and the Office of the Inspector General.
11. Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population (Exec. Order No. 12898). These four laws and Executive Order No. 12898 prohibit discrimination in the provision of services or benefits on the basis of race, color, national origin, sex, handicap or age in programs or activities receiving federal financial assistance. These anti-discrimination provisions apply to the entire operations of federal assistance recipients, not just the specific program or activity being funded by the assistance. The Contractor shall assure that they will comply with the requirements of the non-discrimination laws as required by the IDNR.
12. Disadvantaged Business Enterprises (DBE's). The following requirements shall apply to prevent unfair practices that adversely affect DBE's:
  - a. Prime Contractor must pay its Subcontractor for satisfactory performance no more than 30 days from the Prime Contractor's receipt of payment.
  - b. Prime Contractor must notify in writing prior to termination of a DBE subcontractor for convenience.
  - c. Prime Contractor must employ the six Good Faith Efforts to solicit a replacement subcontractor if a DBE subcontractor fails to complete work under a subcontract for any reason.

#### 7.13 *Safety and Protection*

SC-7.13. Add the following new paragraph immediately following Paragraph 7.13.J:

- K. The Contractor shall note that hydrogen sulfide, methane, or other hazardous gases may be present at several areas of the work site, including but not limited to manholes, control structures, pipelines and sewers, treatment structures, pumping stations, and process or control buildings. Contractor shall maintain safe working conditions at all times.

#### 7.16 *Submittals*

SC-7.16.A Replace the last sentence of subparagraph 7.16.A.3 with the following:

This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation, otherwise Contractor will not be relieved of the responsibility of executing the Work in accordance with the Contract Documents, even though such Shop Drawings or Samples have been otherwise reviewed.

SC-7.16.A Add the following subparagraph under 7.16.A.3:

- a. If a Shop Drawing or Sample, as submitted, indicates a variation from the Contract Requirements as set forth in the Contract Documents and Engineer finds same to be in the interest of Owner and to be so minor as not to involve a change in the Contract Price or time for performance, Engineer may approve the Shop Drawings or Samples; provided however, such departure is slight in nature and does not affect the design concept of the Work.



SC-7.16.A Add the following subparagraphs after 7.16.A.3.a:

4. Contractor shall submit all Shop Drawings and Samples sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting and rechecking and to avoid any delay in progress of the Work.
5. Shop Drawings and Sample submittals not conforming to requirements of this Paragraph 7.16.A and the Specifications will be returned to Contractor without action for resubmittal and the resulting delay shall be entirely the responsibility of Contractor.

SC-7.16.B. Add the following subparagraphs under subparagraph 7.16.B.1:

- c. Shop Drawings submitted as herein provided by Contractor and reviewed by Engineer for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by Owner.
- d. When Shop Drawings are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the drawings and Specifications.
- e. For-Information-Only submittals upon which the Engineer is not expected to conduct review or take responsive action may be so identified in the Contract Documents.

SC-7.16.C. Add the following under Paragraph 7.16.C:

9. Engineer's review of Shop Drawings and Samples, Standard Specifications and descriptive literature submitted by Contractor will be only for general conformance with design concept, except as otherwise provided, and shall not be construed as:
  - a. permitting any departure from the Contract Requirements;
  - b. relieving Contractor of the responsibility for any error in details, dimensions or otherwise that may exist in such submittals;
  - c. constituting a blanket approval of dimensions, quantities, or details of the material or equipment shown; or
  - d. approving departures from additional details or instructions previously furnished by Engineer. Such check or review shall not relieve Contractor of the full responsibility of meeting all of the requirements of the Contract Documents.

## **ARTICLE 8—OTHER WORK AT THE SITE [NOT MODIFIED]**

## **ARTICLE 9—OWNER'S RESPONSIBILITIES [NOT MODIFIED]**

## **ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION**

### **10.03 Resident Project Representative**

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

- C. The Resident Project Representative (RPR) will be Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. The duties, responsibilities, and limitation of authority of the

Resident Project Representative are set forth in the attachment to the Supplementary Conditions entitled "Attachment A – Duties, Responsibilities, and Limitations of Authority of Resident Project Representative."

## **ARTICLE 11—CHANGES TO THE CONTRACT**

### *11.07 Change of Contract Price*

SC-11.07.B. Replace subparagraph 11.07.B.2 with the following:

2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2), and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of extra Work; or

### *11.08 Change of Contract Times*

SC-11.08. Add the following paragraph after paragraph 11.08.B:

- C. No extension of the Contract Time will be allowed for additional Work or for claimed delay unless the additional Work contemplated or claimed delay is shown to be on the critical path of the Project's schedule of construction or Contractor can show by Critical Path Method analysis how the additional Work or claimed delay adversely affects the critical path.

### *11.09 Change Proposals*

SC-11.09. Replace the first sentence of subparagraph 11.09.A with the following:

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

SC-11.09. Add the following new paragraph immediately after paragraph 11.09.D:

- E. Change Proposal Request: When Owner requests Contractor to present a proposal to accomplish a change in the Work, the request will be made in the form of a Change Proposal Request (CPR) prepared by Engineer. If requested by Owner or Engineer, Contractor shall provide an itemized breakdown of the cost of the change. Engineer will make recommendations to Owner concerning acceptance. Contractor is not authorized to proceed with a change contained in a CPR until a Change Order is properly signed and issued.

## **ARTICLE 12—CLAIMS [NOT MODIFIED]**

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

### *13.03 Unit Price Work*

SC-13.03 Replace subparagraph 13.03.C. with the following subparagraph:

- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to unit price work listed and the cost of incidental work included as a part of the unit price.

SC-13.03 Delete Paragraph 13.03.E in its entirety and insert the following in its place:

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  - a. the extended price of a particular item of Unit Price Work amounts to 5 percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than 25 percent from the estimated quantity of such item indicated in the Agreement; and
  - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

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

14.03 Defective Work

SC-14.03. Add the following new subparagraph immediately after 14.03.F.:

- G. The acceptance at any time of materials or equipment by or on behalf of Owner shall not be a bar to future rejection if they are subsequently found to be defective, inferior in quality, or not equal to the material or equipment specified, or are not as represented to Engineer or Owner.

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

15.01 *Progress Payments*

SC-15.01.B Add the following subparagraphs immediately after subparagraph 15.01.B.4.

5. Contractor's Application for Progress Payment shall be prepared on the form provided in the Contract Documents. The Application for Progress Payment shall reflect the total value of stored materials and equipment, the value of the work completed based on the Schedule of Values provided in Paragraphs 2.03 and 2.05 of the General Conditions, retainage, previous amounts paid, and the net amount due.

6. The Owner will consider payment of the Contractor's Applications for Progress Payments at its first regular City Council meeting on the second Monday of each month. This regular meeting date shall be considered "the date established for each progress payment" in the application of the time frames established for submittal of Application for Progress Payment by the Contractor and review of Application for Progress Payment by the Engineer in Paragraph 15.01.B. of the General Conditions.
7. Contractor's Applications for Payment shall be accompanied by the documentation specified herein.
  - a. *Materials and Equipment.* Payments for stored materials and equipment shall be based only upon the actual cost of the materials and equipment to Contractor and shall not include any overhead or profit to Contractor. Partial payments will not be made for undelivered materials or equipment (including any work, labor, or any other services provided for any undelivered materials or equipment).
  - b. *Schedules and Data.* During the progress of the Work, each Application for Payment shall be accompanied by Contractor's updated schedule of operations, or progress report, with such shop drawings schedules, procurement schedules, value of material on hand included in the application, and other data specified in Division 1 or reasonably required by Engineer.

SC-15.01.D.1 Delete paragraph 15.01.D.1 in its entirety and replace with the following:

1. Thirty (30) days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

### 15.03 *Substantial Completion*

SC-15.03.A. Add the following three new subparagraphs under paragraph 15.03.A.:

1. "Substantial Completion" means that all work is completed for the utilities and testing is completed and the water main and all new services are in use and the existing water main is abandoned per the plans. All pavement has been completed and traffic is re-opened. Seeding, topsoil, fine grading, cure time, are not required for substantial completion. The project shall be ready for public use as intended, to the satisfaction of the Engineer.

Portions of the Work not essential to facility operation, which can be completed without interruption of facility operation, may be completed after the Work is accepted as substantially complete, and may include the following items: permanent seeding, punchlist items, project cleanup, and submittal of documents required by funding agencies, submission of the final payment Application.

SC-15.03.B. Add the following subparagraph under Paragraph 15.03.B.:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by

Contractor to Owner who will reimburse the Engineer. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

#### 15.06 *Final Payment*

SC-15.06 Add the following paragraphs after Paragraph 15.06.A.3:

4. Retained Funds: Retained funds may be released in accordance with the *Code of Iowa* for work that is substantially complete.
  - a. Requests for early release of retained funds shall be accompanied by a sworn statement from the contractor that, ten calendar days prior to filing the request, notice was given as required in Section 7 of Chapter 26.13 to all subcontractors, sub-subcontractors, and suppliers, and by an itemized contractor's statement showing the amount of State of Iowa sales tax or use tax and to whom paid on all materials which have become part of the work for which the contractor is requesting payment.
  - b. An amount equal to two-hundred percent of the value of the labor or materials yet to be provided, as determined by the engineer, will be withheld until such labor or materials are provided.
  - c. An amount equal to two-hundred percent of the amount of any claims of subcontractors or suppliers will be withheld.

SC-15.06 Replace paragraph 15.06.E. with the following:

- E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor after 31 days after final acceptance of the completed contract by resolution of the City Council.

#### 15.07 *Waiver of Claims*

SC-15.07 Replace paragraph 15.07.B. with the following:

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner and/or Engineer other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

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

- G. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be the number of years set forth in SC-6.01.B.1.

### **ARTICLE 16—SUSPENSION OF WORK AND TERMINATION (NOT MODIFIED)**

### **ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES**

#### 17.02 *Arbitration*

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

17.02 *Arbitration*

- A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-17.02). Any controversy or claim in the amount of \$100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 17, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.
- C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
- D. The fees and expenses of the arbitrators and any arbitration service shall be shared equally by Owner and Contractor.
- E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.
- F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- G. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
  - 1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;

2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;
  3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and
  4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.
- H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

## **ARTICLE 18—MISCELLANEOUS**

### *18.07 Controlling Law*

SC-18.07 Replace paragraph 18.07.A. in its entirety with the following:

- A. This Contract is to be governed by the law of the state of Iowa with venue in Fayette County District Court, Iowa

END OF SECTION

**A. APPLICABILITY**

The Project or Program to which the construction work covered by this Contract pertains is being assisted by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**(1) MINIMUM WAGES**

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment, computed at rates not less than those contained in the wage determination of the Secretary of Labor (which is attached hereto and made a part hereof), regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place, where it can be easily seen by the workers.

**(ii) Additional Classifications.**

- (A) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor, the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division ("Administrator"), Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget ("OMB") under OMB control number 1235-0023.)
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, or HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)



**(D)** The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (1)(ii)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)

**(2) Withholding.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The U.S. Department of Labor shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**(3) Payrolls and basic records.**

**(i) Maintaining Payroll Records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification(s), hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid.

Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1235-0023 and 1215-0018)

**(ii) Certified Payroll Reports.**

**(A)** The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/forms> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the U.S. Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1235-0008.)

- (B)** Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;
  - (2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
  - (3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract; and
- (C)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by subparagraph (a)(3)(ii)(b).
- (D)** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

**(iii)** The contractor or subcontractor shall make the records required under subparagraph (a)(3)(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the U.S. Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **(4) Apprentices and Trainees.**

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate), to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman’s hourly rate) specified in the contractor’s or subcontractor’s registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program.

If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed, unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) **Equal employment opportunity.** The utilization of apprentices, trainees, and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

- (5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.
- (6) **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs (1) through (11) in this paragraph (a) and such other clauses as HUD or its designee may, by appropriate instructions, require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.
- (7) **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- (9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.
- (10) **Certification of Eligibility.**
- (i) By entering into this Contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) Anyone who knowingly makes, presents, or submits a false, fictitious, or fraudulent statement, representation or certification is subject to criminal, civil and/or administrative sanctions, including fines, penalties, and imprisonment (e.g., 18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802).

**(11) Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic, to whom the wage, salary, or other labor standards provisions of this Contract are applicable, shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

## **B. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The provisions of this paragraph (b) are applicable where the amount of the prime contract exceeds **\$100,000**. As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph B(1) of this paragraph, the contractor, and any subcontractor responsible therefor, shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph B(1) of this paragraph, **in the sum set by the U.S. Department of Labor at 29 CFR 5.5(b)(2)** for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph B(1) of this paragraph. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Note), the DOL adjusts this civil monetary penalty for inflation no later than January 15 each year.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages, as provided in the clause set forth in subparagraph B(2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph B(1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs B(1) through (4) of this paragraph.

## **C. HEALTH AND SAFETY**

The provisions of this paragraph (c) are applicable where the amount of the prime contract exceeds **\$100,000**.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract, so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

# Required Contract Provisions



# REQUIRED CONTRACT LANGUAGE AND PROVISIONS

All project contracts shall contain at a minimum the following provisions, as appropriate.

## **ALL CONTRACTS**

### **1. Access and Maintenance of Records**

*The contractor must maintain records, including supporting documentation, for three years from closeout of the grant to the state of Iowa.*

*At any time during normal business hours and as frequently as is deemed necessary, the contractor shall make available to the Iowa Economic Development Authority, the State Auditor, the General Accounting Office, and the Department of Housing and Urban Development, for their examination, all of its records pertaining to all matters covered by this contract and permit these agencies to audit, examine, make excerpts or transcripts from such records, contract, invoices, payrolls, personnel records, conditions of employment, and all other matters covered by this contract.*

### **2. Civil Rights**

The Contractor must comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964 (P.L. 88-352).  
*States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the basis of race, color, or national origin.*
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended.
- Federal Executive Order 11063, as amended by Executive Order 12259  
*Equal Opportunity Housing*
- Iowa Civil Rights Act of 1965.  
*This Act mirrors the Federal Civil Rights Act.*
- Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309).  
*Provides that no person shall be excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of race, color, national origin, sex, age, or handicap under any program or activity funded in part or in whole under Title I of the Act.*
- The Age Discrimination Act of 1975, as amended (42 U.S.C. 1601 et seq.)  
*Provides that no person on the basis of age, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance.*
- Section 504 of the Rehabilitation Act of 1973, as amended (P.L. 93-112, 29 U.S.C. 794).  
*Provides that no otherwise qualified individual shall solely by reason of his/her handicap be excluded from participation in, be denied the benefits of, or be discriminated against under any program or activity receiving Federal financial assistance.*
- Americans with Disabilities Act (P.L. 101-336, 42 U.S.C. 12101-12213)  
*Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.*

- Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

*The purpose of section 3 of the Housing and Urban Development Act of 1968 ( 12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.*

### **3. Termination Clause**

*All contracts utilizing CDBG funds must contain a termination clause that specifies the following:*

- Under what conditions the clause may be imposed.
- The form the termination notice must take (e.g., certified letter).
- The time frame required between the notice of termination and its effective date.
- The method used to compute the final payment(s) to the contractor.

### **4. Certification regarding government-wide restriction on lobbying.**

*All contracts utilizing CDBG funds must contain the following certification concerning restriction of lobbying:*

"The Recipient certifies, to the best of his or her knowledge and belief, that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee, or an employee of a Member of congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Federal Lobbying" in accordance with its instruction.
- iii. The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

### **5. Lead-Safe Housing Regulations (As applicable)**

24 CFR Part 35 et. al.

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Properties and Housing Receiving Federal Assistance, Final Rule

### **6. Recycled Materials**

The contractor agrees to comply with all the requirements of Code of Iowa chapter 8A.315-317 and Iowa Administrative Code chapter 11-117.6(5) — Recycled Product and Content which states:

When appropriate, specifications shall include requirements for the use of recovered materials and products.

The specifications shall not restrict the use of alternative materials, exclude recovered materials, or require performance standards that exclude products containing recovered materials unless the subrecipient seeking the product can document that the use of recovered materials will impede the intended use of the product.

## **7. Notice of Awarding Agency Requirements and Regulations Pertaining to Reporting**

The Contractor must provide information as necessary and as requested by the Iowa Economic Development Authority for the purpose of fulfilling all reporting requirements related to the CDBG program.

### **ALL CONTRACTS IN EXCESS OF \$10,000**

#### **Federal Executive Orders 11246 and 11375:**

*Provides that no one be discriminated in employment.*

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of the Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.



## **ALL CONTRACTS IN EXCESS OF \$100,000**

### **Clean Air and Water Acts:**

- Section 306 of the Clean Air Acts (42 U.S.C. 1857(h)).
- Section 508 of the Clean Water Act (33 U.S.C. 1368).
- Executive Order 11738. *Providing administration of the Clean Air and Water Acts*

Clean Air and Water Acts - required clauses:

This clause is required in all third party contracts involving projects subject to the Clean Air Act (42 U.S.C. 1857 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and the regulations of the Environmental Protection Agency with respect to 40 CFR Part 15, as amended. It should also be mentioned in the bid document.

During the performance of this contract, the CONTRACTOR agrees as follows:

- (1) The CONTRACTOR will certify that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the Excluded Party Listing System pursuant to 40 CFR 32.
- (2) The CONTRACTOR agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) The CONTRACTOR agrees that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the Excluded Party Listing System.
- (4) The CONTRACTOR agrees that it will include or cause to be included the criteria and requirements in Paragraph (1) through (4) of this section in every nonexempt subcontract and require every subcontractor to take such action as the Government may direct as a means of enforcing such provisions.

## **ALL CONSTRUCTION CONTRACTS IN EXCESS OF \$2,000**

### **Federal Labor Standards**

In addition to the preceding provisions, all construction contracts in excess of \$2,000 must include the Federal Labor Standards Provisions (verbatim) found in Appendix 2 under Required Contract Provisions. (Housing rehabilitation contracts of less than 8 units are excluded from this requirement.)

Federal Labor Standards Provisions (verbatim) found in Appendix 2, including:

- Davis-Bacon and Related Acts
- Contract Work Hours and Safety Standard Act
- Copeland Anti-kickback Act

## SECTION 3 LANGUAGE FOR PROCUREMENT DOCUMENTS AND CONTRACTS

*(This language is to be included in all procurement documents/solicitations and all covered contracts)*

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- C. The contractor agrees to post copies of a notice advising workers of the Contractor's commitments under Section 3 in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to provide written notice of employment and contracting opportunities to all known Section 3 Workers and Section 3 Businesses.
- E. The contractor agrees to employ, to the greatest extent feasible, Section 3 workers or provide written justification to the recipient that is consistent with 24 CFR Part 75, describing why it was unable to meet minimum numerical Section 3 Worker hours goals, despite its efforts to comply with the provisions of this clause.
- F. The contractor agrees to maintain records documenting Section 3 Workers that were hired to work on previous Section 3 covered projects or activities that were retained by the contractor for subsequent Section 3 covered projects or activities.
- G. The contractor agrees to post contract and job opportunities to the Opportunity Portal and will check the Business Registry for businesses located in the project area.
- H. The contractor agrees to include compliance with Section 3 requirements in every subcontract for Section 3 projects as defined in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
- I. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.
- J. The contractor will certify that they have followed prioritization of effort in 24 CFR part 75.19 for all employment and training opportunities. The contractor will further certify that it meets or exceeds the applicable Section 3 benchmarks, defined in 24 CFR Part 75.23, and if not, shall describe in detail the qualitative efforts it has taken to pursue low- and very low-income persons for economic opportunities.
- K. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

Section 3 Business Concerns are encouraged to respond to this proposal. A Section 3 Business Concern is one that satisfies one of the following requirements:

1. It is at least 51 percent owned and controlled by low- or very low-income persons;
2. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 Workers\*; or
3. It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

\* A Section 3 Worker is defined as any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

1. The worker's income for the previous or annualized calendar year is below the applicable income limit established by HUD;
2. The worker is employed by a Section 3 business concern; or
3. The worker is a YouthBuild participant.

Businesses that believe they meet the Section 3 criteria are encouraged to register as a Section 3 Business through HUD's website: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/RegisterBusiness>

## Section 3 clause

***All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):***

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).



# Project Construction Sign

White Background

## Project Title

Black  
Lettering

Sponsor/Developer

Official(s) or Sponsor Address

Architect or Engineer  
(second line)

Contractor  
(second line)

Project Financed by:

Community Development Block Grant  
Iowa Economic Development Authority

Kim Reynolds, Governor

Sign Dimensions: 1200mm x 2400mm (approx. 4'x8'x3/4")  
Plywood Panel (APA Rated A-B Grade-Exterior)

Black

**CDBG**  
Community Development Block Grant

**IOWA**<sup>®</sup>  
economic development

Pantone 7540  
(CMYK: 0/0/0/72)

Pantone 390  
(CMYK: 22/0/100/8)

Pantone 7540  
(CMYK: 0/0/0/72)

Black  
Lettering



Superseded General Decision Number: IA20220028

State: Iowa

Construction Types: Heavy and Highway

Counties: Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Winneshiek, Woodbury, Worth and Wright Counties in Iowa.

HIGHWAY CONSTRUCTION PROJECTS and HEAVY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	◆ Executive Order 14026 generally applies to the contract. ◆ The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	◆ Executive Order 13658 generally applies to the contract. ◆ The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours performing on that contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the





ZONE 2		
GROUP A.....	\$ 33.55	16.00
GROUP B.....	\$ 31.95	16.00
GROUP C.....	\$ 29.40	16.00
GROUP D.....	\$ 29.40	16.00
ZONE 3		
GROUP A.....	\$ 31.15	27.20
GROUP B.....	\$ 29.35	27.20
GROUP C.....	\$ 28.35	27.20
GROUP D.....	\$ 28.35	27.20
ZONE 4		
GROUP A.....	\$ 31.60	15.85
GROUP B.....	\$ 30.46	15.85
GROUP C.....	\$ 28.38	15.85
GROUP D.....	\$ 28.38	15.85
ZONE 5		
GROUP A.....	\$ 29.52	12.50
GROUP B.....	\$ 28.48	12.50
GROUP C.....	\$ 26.75	12.50
GROUP D.....	\$ 25.75	12.50

TRUCK DRIVER (AND PAVEMENT MARKING DRIVER/SWITCHPERSON)

ZONE 1.....	\$ 25.56	12.19
ZONE 2.....	\$ 25.56	12.19
ZONE 3.....	\$ 25.56	12.19
ZONE 4.....	\$ 25.56	8.24
ZONE 5.....	\$ 23.80	8.24

ZONE DEFINITIONS

- ZONE 1 The Counties of Polk, Warren, and Dallas for all Crafts, and Linn County Carpenters only.
- ZONE 2 The Counties of Dubuque for all Crafts and Linn County for all Crafts except Carpenters.
- ZONE 3 The Cities of Burlington (including West Burlington), Clinton, Fort Madison, Keokuk, and Middleton (including the Iowa Army Ammunition Plant) and Muscatine (and abutting municipalities of any such cities).
- ZONE 4 Story, Black Hawk, Cedar, Jasper, Jones, Jackson, Louisa, Madison, and Marion Counties; Clinton County (except the City of Clinton), Johnson County, Muscatine County (except the City of Muscatine), the City of Council Bluffs, Lee County and Des Moines County.
- ZONE 5 All areas of the state not listed above.

LABORER CLASSIFICATIONS - ALL ZONES

- GROUP AA ? (Zones 1, 2, and 3) Skilled pipelayer (sewer, water, and conduits) and tunnel laborers; asbestos abatement worker
- GROUP A - Carpenter tender on bridges and box culverts; CCTV\* sewer inspection operator; curb machine (without a seat); deck hand; diamond & core drills; drill operator on air tracs, wagon drills, and similar drills; form setter/stringman on paving work; gunnite nozzleman; joint sealer kettleman; laser operator; powderman tender; powderman/blaster; sign erector; saw operator; {(Zones 4 and 5) Skilled pipelayer (sewer, water, and conduits); tunnel laborer; asbestos abatement worker}. \*new labor classification (CCTV: closed circuit television)
- GROUP B - Air, gas, electric tool operator; barco hammer; carpenter tender; caulker; chain sawman; compressor (under 400 cfm); concrete finisher tender; concrete processing materials and monitors; cutting torch on demolition; drill

tender; dumpmen; electric drills; fence erectors; form line expansion joint assembler; form tamper; general laborer; grade checker; handling and placing metal mesh, dowel bars, reinforcing bars and chairs; hot asphalt laborer; installing temporary traffic control devices; jackhammerman; mechanical grouter; painter (all except stripers); paving breaker; planting trees, shrubs and flowers; power broom (not self-propelled); power buggyman; rakers; rodman (tying reinforcing steel); sandblaster; seeding and mulching; sewer utility topman/bottom man; spaders; stressor or stretcherman on pre or post tensioned concrete; stringman on re/surfacing/no grade control; swinging stage, tagline, or block and tackle; tampers; timberman; tool room men and checkers; tree climber; tree groundman; underpinning and shoring caissons over twelve feet deep; vibrators; walk behind trencher; walk behind paint stripers; walk behind vibrating compactor; water pumps (under three inch); work from bosun chair.

GROUP C - Scale weigh person; traffic control/flagger, surveillance or monitor; water carrier.

#### POWER EQUIPMENT OPERATOR CLASSIFICATIONS - ALL ZONES

GROUP A - All terrain (off road) forklift; asphalt breakdown roller (vibratory); asphalt laydown machine; asphalt plant; asphalt screed; bulldozer (finish); central mix plant; concrete pump; crane; crawler tractor pulling scraper; directional drill (60,000 (lbs) pullback and above); dragline and power shovel; dredge engineer; excavator (over 4 cu. yd.); front end loader (4 cy and over); horizontal boring machine; master mechanic; milling machine (over 350 hp); motor grader (finish); push cat; rubber tired backhoe (over 4 cu. yd.); scraper (12 cu. yd. and over or finish); Self-propelled rotary mixer/road reclaimer; sidebroom tractor; slipform portland concrete paver; tow or push boat; trenching machine (Cleveland 80 or similar)

GROUP B - Articulated off road hauler, asphalt heater/planer; asphalt material transfer vehicle; asphalt roller; belt loader or similar loader; bulldozer (rough); churn or rotary drill; concrete curb machine; crawler tractor pulling ripper, disk or roller; deck hand/oiler; directional drill (less than 60,000 (lbs) pullback); distributor; excavator (1/2 cu. yd. and under); form riding concrete paver; front end loader (2 to less than 4 cu. yd.); group equipment greaser; mechanic; milling machine (350 hp. and less); paving breaker; portland concrete dry batch plant; rubber tired backhoe (1/2 cu. yd. and under); scraper (under 12 cu. yd.); screening, washing and crushing plant (mobile, portable or stationary); shoulder machine; skid loader (1 cu. yd. and over); subgrader or trimmer; trenching machine; water wagon on compaction.

GROUP C - Boom & winch truck; concrete spreader/belt placer; deep wells for dewatering; farm type tractor (over 75 hp.) pulling disc or roller; forklift; front end loader (under 2 cu. yd.); motor grader (rough); pile hammer power unit; pump (greater than three inch diameter); pumps on well points; safety boat; self-propelled roller (other than asphalt); self-propelled sand blaster or shot blaster, water blaster or striping grinder/remover; skid loader (under 1 cu. yd.); truck mounted post driver.

GROUP D - Boiler; compressor; cure and texture machine; dow box; farm type or utility tractor (under 75 hp.) pulling disk, roller or other attachments; group greaser tender; light plants; mechanic tender; mechanical broom; mechanical

heaters; oiler; pumps (under three inch diameter); tree chipping machine; truck crane driver/oiler.

\*\* CARPENTERS AND PILEDRIVERMEN, or IRONWORKERS (ZONE 5)  
Setting of structural steel; any welding incidental to bridge or culvert construction; setting concrete beams.

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"



**EJCDC C-451 – Qualifications Statement**

**ARTICLE 1—GENERAL INFORMATION**

1.01 Provide contact information for the Business:

Legal Name of Business:			
Corporate Office			
Name:		Phone number:	
Title:		Email address:	
Business address of corporate office:			
Local Office			
Name:		Phone number:	
Title:		Email address:	
Business address of local office:			

1.02 Provide information on the Business’s organizational structure:

Form of Business:	<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation		
<input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Joint Venture comprised of the following companies:			
1.			
2.			
3.			
Provide a separate Qualification Statement for each Joint Venturer.			
Date Business was formed:		State in which Business was formed:	
Is this Business authorized to operate in the Project location?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Pending	

1.03 Identify all businesses that own Business in whole or in part (25% or greater), or that are wholly or partly (25% or greater) owned by Business:

Name of business:		Affiliation:	
Address:			
Name of business:		Affiliation:	
Address:			
Name of business:		Affiliation:	
Address:			



**EJCDC C-451 – Qualifications Statement**

1.04 Provide information regarding the Business’s officers, partners, and limits of authority.

Name:		Title:	
Authorized to sign contracts:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Limit of Authority:	\$
Name:		Title:	
Authorized to sign contracts:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Limit of Authority:	\$
Name:		Title:	
Authorized to sign contracts:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Limit of Authority:	\$
Name:		Title:	

**ARTICLE 2—LICENSING**

2.01 Provide information regarding licensure for Business:

Name of License:			
Licensing Agency:			
License No:		Expiration Date:	
Name of License:			
Licensing Agency:			
License No:		Expiration Date:	

**ARTICLE 3—DIVERSE BUSINESS CERTIFICATIONS**

3.01 Provide information regarding Business’s Diverse Business Certification, if any. Provide evidence of current certification.

Certification	Certifying Agency	Certification Date
<input type="checkbox"/> Disadvantaged Business Enterprise		
<input type="checkbox"/> Minority Business Enterprise		
<input type="checkbox"/> Woman-Owned Business Enterprise		
<input type="checkbox"/> Small Business Enterprise		
<input type="checkbox"/> Disabled Business Enterprise		
<input type="checkbox"/> Veteran-Owned Business Enterprise		
<input type="checkbox"/> Service-Disabled Veteran-Owned Business		
<input type="checkbox"/> HUBZone Business (Historically Underutilized) Business		
<input type="checkbox"/> Other		
<input type="checkbox"/> None		

**EJCDC C-451 – Qualifications Statement**

**ARTICLE 4—SAFETY**

4.01 Provide information regarding Business’s safety organization and safety performance.

Name of Business’s Safety Officer:			
Safety Certifications			
Certification Name	Issuing Agency	Expiration	

4.02 Provide Worker’s Compensation Insurance Experience Modification Rate (EMR), Total Recordable Frequency Rate (TRFR) for incidents, and Total Number of Recorded Manhours (MH) for the last 3 years and the EMR, TRFR, and MH history for the last 3 years of any proposed Subcontractor(s) that will provide Work valued at 10% or more of the Contract Price. Provide documentation of the EMR history for Business and Subcontractor(s).

Year									
Company	EMR	TRFR	MH	EMR	TRFR	MH	EMR	TRFR	MH

**ARTICLE 5—FINANCIAL**

5.01 Provide information regarding the Business’s financial stability. Provide the most recent audited financial statement, and if such audited financial statement is not current, also provide the most current financial statement.

Financial Institution:			
Business address:			
Date of Business’s most recent financial statement:		<input type="checkbox"/> Attached	
Date of Business’s most recent audited financial statement:		<input type="checkbox"/> Attached	
Financial indicators from the most recent financial statement			
Contractor’s Current Ratio (Current Assets ÷ Current Liabilities)			
Contractor’s Quick Ratio ((Cash and Cash Equivalents + Accounts Receivable + Short Term Investments) ÷ Current Liabilities)			

**EJCDC C-451 – Qualifications Statement**

**ARTICLE 6—SURETY INFORMATION**

6.01 Provide information regarding the surety company that will issue required bonds on behalf of the Business, including but not limited to performance and payment bonds.

Surety Name:			
Surety is a corporation organized and existing under the laws of the state of:			
Is surety authorized to provide surety bonds in the Project location?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Is surety listed in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” published in Department Circular 570 (as amended) by the Bureau of the Fiscal Service, U.S. Department of the Treasury?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Mailing Address (principal place of business):			
Physical Address (principal place of business):			
Phone (main):		Phone (claims):	

**ARTICLE 7—INSURANCE**

7.01 Provide information regarding Business’s insurance company(s), including but not limited to its Commercial General Liability carrier. Provide information for each provider.

Name of insurance provider, and type of policy (CLE, auto, etc.):			
Insurance Provider	Type of Policy (Coverage Provided)		
Are providers licensed or authorized to issue policies in the Project location?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Does provider have an A.M. Best Rating of A-VII or better?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Mailing Address (principal place of business):			
Physical Address (principal place of business):			
Phone (main):		Phone (claims):	

**EJCDC C-451 – Qualifications Statement**

**ARTICLE 8—CONSTRUCTION EXPERIENCE**

8.01 Provide information that will identify the overall size and capacity of the Business.

Average number of current full-time employees:	
Estimate of revenue for the current year:	
Estimate of revenue for the previous year:	

8.02 Provide information regarding the Business’s previous contracting experience.

Years of experience with projects like the proposed project:		
As a general contractor:		As a joint venturer:
Has Business, or a predecessor in interest, or an affiliate identified in Paragraph 1.03:		
Been disqualified as a bidder by any local, state, or federal agency within the last 5 years? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Been barred from contracting by any local, state, or federal agency within the last 5 years? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Been released from a bid in the past 5 years? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Defaulted on a project or failed to complete any contract awarded to it? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Refused to construct or refused to provide materials defined in the contract documents or in a change order? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Been a party to any currently pending litigation or arbitration? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Provide full details in a separate attachment if the response to any of these questions is Yes.		

8.03 List all projects currently under contract in Schedule A and provide indicated information.

8.04 List a minimum of three and a maximum of six projects completed in the last 5 years in Schedule B and provide indicated information to demonstrate the Business’s experience with projects similar in type and cost of construction.

8.05 In Schedule C, provide information on key individuals whom Business intends to assign to the Project. Provide resumes for those individuals included in Schedule C. Key individuals include the Project Manager, Project Superintendent, Quality Manager, and Safety Manager. Resumes may be provided for Business’s key leaders as well.

**ARTICLE 9—REQUIRED ATTACHMENTS**

9.01 Provide the following information with the Statement of Qualifications:

- A. If Business is a Joint Venture, separate Qualifications Statements for each Joint Venturer, as required in Paragraph 1.02.
- B. Diverse Business Certifications if required by Paragraph 3.01.
- C. Certification of Business’s safety performance if required by Paragraph 4.02.
- D. Financial statements as required by Paragraph 5.01.

## **EJCDC C-451 – Qualifications Statement**

- E. Attachments providing additional information as required by Paragraph 8.02.
- F. Schedule A (Current Projects) as required by Paragraph 8.03.
- G. Schedule B (Previous Experience with Similar Projects) as required by Paragraph 8.04.
- H. Schedule C (Key Individuals) and resumes for the key individuals listed, as required by Paragraph 8.05.
- I. Additional items as pertinent.

**EJCDC C-451 – Qualifications Statement**

This Statement of Qualifications is offered by:

Business: \_\_\_\_\_  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Date: \_\_\_\_\_  
*(date signed)*

*(If Business is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Email: \_\_\_\_\_

**EJCDC C-451 – Qualifications Statement**

**Schedule A—Current Projects**

Name of Organization		Project Name	
Project Owner			
General Description of Project			
Project Cost		Date Project	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager
Name			Quality Control Manager
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)			
Name	Title/Position	Organization	Telephone
Owner			Email
Designer			
Construction Manager			

Project Owner		Project Name	
General Description of Project			
Project Cost		Date Project	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager
Name			Quality Control Manager
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)			
Name	Title/Position	Organization	Telephone
Owner			Email
Designer			
Construction Manager			

Project Owner		Project Name	
General Description of Project			
Project Cost		Date Project	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager
Name			Quality Control Manager
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)			
Name	Title/Position	Organization	Telephone
Owner			Email
Designer			
Construction Manager			

**EJCDC C-451 – Qualifications Statement**



**EJDC C-451 – Qualifications Statement**

**Schedule B—Previous Experience with Similar Projects**

Name of Organization		Project Name	
Project Owner			
General Description of Project		Date Project	
Project Cost			
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager
Name			Quality Control Manager

Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)

Owner	Name	Title/Position	Organization	Telephone	Email
Designer					
Construction Manager					

Project Owner		Project Name	
General Description of Project			
Project Cost		Date Project	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager
Name			Quality Control Manager

Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)

Owner	Name	Title/Position	Organization	Telephone	Email
Designer					
Construction Manager					

Project Owner		Project Name	
General Description of Project			
Project Cost		Date Project	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager
Name			Quality Control Manager

Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)

Owner	Name	Title/Position	Organization	Telephone	Email
Designer					
Construction Manager					

## EJCDC C-451 – Qualifications Statement

**EJDC C-451 – Qualifications Statement**

**Schedule B—Previous Experience with Similar Projects**

Name of Organization		Project Name	
Project Owner			
General Description of Project		Date Project	
Project Cost			
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager
Name			Quality Control Manager
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)			
Name	Title/Position	Organization	Telephone
Owner			Email
Designer			
Construction Manager			

Project Owner		Project Name	
General Description of Project			
Project Cost		Date Project	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager
Name			Quality Control Manager
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)			
Name	Title/Position	Organization	Telephone
Owner			Email
Designer			
Construction Manager			

Project Owner		Project Name	
General Description of Project			
Project Cost		Date Project	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager
Name			Quality Control Manager
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)			
Name	Title/Position	Organization	Telephone
Owner			Email
Designer			
Construction Manager			

**EJCDC C-451 – Qualifications Statement**

**Schedule C—Key Individuals**

<b>Project Manager</b>			
Name of individual			
Years of experience as project manager			
Years of experience with this organization			
Number of similar projects as project manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate's role on project		Candidate's role on project	
<b>Project Superintendent</b>			
Name of individual			
Years of experience as project superintendent			
Years of experience with this organization			
Number of similar projects as project superintendent			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate's role on project		Candidate's role on project	

## EJCDC C-451 – Qualifications Statement

**EJCDC C-451 – Qualifications Statement**

<b>Safety Manager</b>			
Name of individual			
Years of experience as project manager			
Years of experience with this organization			
Number of similar projects as project manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate's role on project		Candidate's role on project	
<b>Quality Control Manager</b>			
Name of individual			
Years of experience as project superintendent			
Years of experience with this organization			
Number of similar projects as project superintendent			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate's role on project		Candidate's role on project	



**NOTICE OF AWARD**

Date of Issuance:

Owner: City of Oelwein

Owner's Project No.:

Engineer: Confluence, Inc.

Engineer's Project No.: 21421

Project: Oelwein 2023 Plaza Park Improvements

Contract Name:

Bidder:

Bidder's Address:

You are notified that Owner has accepted your Bid dated \_\_\_\_\_, 2023 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Oelwein 2023 Plaza Park Improvements

The Contract Price of the awarded Contract is \$ \_\_\_\_\_ Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

**[3]** unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner **[3]** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: City of Oelwein

By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_

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



**NOTICE TO PROCEED**

Owner: City of Oelwein Owner's Project No.: \_\_\_\_\_  
Engineer: Confluence, Inc. Engineer's Project No.: 21421  
Contractor: \_\_\_\_\_ Contractor's Project No.: \_\_\_\_\_  
Project: Oelwein 2023 Plaza Park Improvements  
Contract Name: \_\_\_\_\_  
Effective Date of Contract: \_\_\_\_\_

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on **[date Contract Times are to start]** pursuant to Paragraph 4.01 of the General Conditions.

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work will be done at the Site prior to such date.

In accordance with the Agreement:

The date by which Substantial Completion must be achieved is **[date for Substantial Completion, from Agreement]**, and the date by which readiness for final payment must be achieved is **[date for readiness, from Agreement]**.

Before starting any Work at the Site, Contractor must comply with the following: **[Specifier note any access limitations, security procedures, or other restrictions; the following is typical for lump sum projects.]**

Contractor shall attend and participate in a Preconstruction Conference in accordance with Paragraph 2.04 of the General Conditions. Also, Contractor must submit the following to the Engineer before starting any Work at the Site:

- Subcontractor and Supplier List (Supplementary Conditions 7.07)
- Preliminary Progress Schedule (General Conditions 2.03)
- Preliminary Schedule of Submittals (General Conditions 2.03)
- Preliminary Schedule of Values (01 33 00 1.04 & General Conditions 2.03)
- Schedule of Payments (01 33 00 1.05)

Owner: City of Oelwein

By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_

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

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

## SHOP DRAWING / O&M MANUAL TRANSMITTAL

Project: Oelwein 2023 Plaza Park Improvements	Transmittal Date:
Owner: City of Oelwein	Owner's Contract No.:
Engineer:	Engineer's Project No.:
Contractor:	

Specification Section:		<input type="checkbox"/> Shop Drawing	<input type="checkbox"/> O&M Manual
Transmittal No:		<input type="checkbox"/> 1st Submittal	<input type="checkbox"/> Resubmittal (No. ____)
Specification Paragraph Number	Description of Equipment	Manufacturer	

As stated in the Contract Documents, the undersigned CONTRACTOR's submission of these Shop Drawings or samples shall constitute a representation to the OWNER and the ENGINEER that the CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers and similar data or he assumes full responsibility for doing so, and that he has reviewed and coordinated each Shop Drawing or sample with the requirements of the work and the Contract Documents and he represents to the OWNER and the ENGINEER that item(s) described by these Shop Drawings do comply with the requirements of the Contract Documents. The undersigned Contractor certifies that the equipment included in this submittal complies with the latest requirements of the Occupational Health and Safety Act of 1970 including any standards or regulations established by the U.S. Secretary of Labor in administration of said act, and the Iowa Occupational Safety and Health Statutes.

X \_\_\_\_\_  
 (Authorized Signature of Contractor) (Date)

\_\_\_\_\_  
 (Firm Name)

NOTE: All pages of this form on which equipment is listed must be signed.



# Supplier/Contractor Statement of Compliance

Project: Oelwein 2023 Plaza Park Improvements	Transmittal Date:
Owner: <b>City of Oelwein</b>	Owner's Contract No.:
Engineer:	Engineer's Project No.:
Contractor:	

Specification Section:	Transmittal No:
------------------------	-----------------

Equipment Description:

Supplier/Manufacturer:

The undersigned hereby states that the information submitted herein accurately describes the material and/or equipment to be provided and that said material and/or equipment conforms with all requirements of the Contract Documents, except as noted below:

1A  No deviations from the Contract Documents included in this submittal.

(OR)

1B  All deviations from the Contract Documents included in this submittal and any modifications required to the project design to accommodate the submitted material and/or equipment are noted below or on attached sheets.

2  Applicable items are clearly identified and inapplicable data are marked out on all catalog pages included with this submittal.

3  Applicable receiving, handling and storage requirements are included with this submittal.

List of Deviations:

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Supplier  
Authorized  
Signature: \_\_\_\_\_

Contractor  
Authorized  
Signature: \_\_\_\_\_

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

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

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

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



# AMERICAN IRON & STEEL ACT TRANSMITTAL

Project: Oelwein 2023 Plaza Park Improvements	Transmittal Date:
Owner: <b>City of Oelwein</b>	Owner's Contract No.:
Engineer:	Engineer's Project No.:
Contractor:	
Specification Section:	
Transmittal No:	

		American Iron and Steel Act Compliance					
1	2	3	4	5	6		
No.	Product	Not Covered	Not Covered - Steel <50% material value	Covered &	Certification Letter Attached	Incidental &	De Minimis Record Updated & Invoice Saved
1		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The undersigned CONTRACTOR has verified that all products submitted comply with the American Iron and Steel Act requirements as described in the Contract Documents. The CONTRACTOR certifies that the required documentation for products covered under the act has been included with this submittal as indicated above.

X \_\_\_\_\_  
(Authorized Signature of Contractor) (Date)

\_\_\_\_\_  
(Firm Name)

NOTE: All pages of this form on which equipment is listed must be signed.



# SUBMITTAL RESPONSE COMMENTS

<p><b>Project:</b></p> <p style="padding-left: 20px;"><b>Project No.:</b></p> <p><b>Contractor:</b></p> <p><b>Date Received:</b></p> <p><b>Submittal No.:</b></p> <p><b>Item(s):</b></p> <p><b>Manufacturer:</b></p>	<p><b>Submittal Type</b></p> <p><input type="checkbox"/> Shop Drawing</p> <p><input type="checkbox"/> Closeout – O &amp; M Manual</p> <p><input type="checkbox"/> Closeout – Startup Report</p> <p><input type="checkbox"/> Closeout – Warranty</p> <p><input type="checkbox"/> Closeout – Spare Parts</p> <p><input type="checkbox"/> Training</p> <p><input type="checkbox"/> Other (_____)</p>
<p><input type="checkbox"/> A – No Exception Taken</p> <p><input type="checkbox"/> B – Address Notations, No Resubmittal</p> <p><input type="checkbox"/> C – Revise &amp; Resubmit Items Noted</p> <p><input type="checkbox"/> D – Revise &amp; Resubmit Entire Submittal</p> <p><input type="checkbox"/> E – Rejected for the Following Reasons</p> <p><input type="checkbox"/> I – For Information Only</p>	<p><i>C – Revise &amp; Resubmit Items Noted (do not resubmit entire shop drawing)</i></p> <p><i>D – Revise &amp; Resubmit Entire Submittal: only items specifically noted by Engineer shall be revised. Any other revisions shall be clearly noted on a separate sheet by the Contractor and attached to the resubmittal.</i></p>

**NOTE:** This review is only for general conformance with the design concept of the project and general compliance with the information given in the Contract Documents. Corrections or comments made on the shop drawings during this review do not relieve the Contractor from compliance with the requirements of the Contract Documents. Approval of a specific item shall not include approval of an assembly of which the item is a component. The Contractor is responsible for: dimensions to be confirmed and correlated at the jobsite; information that pertains solely to the fabrication processes or to the means, methods, techniques, sequences and procedures of construction; coordination of the Work of all trades; and for performing all work in a safe and satisfactory manner.

**Comments:**

- 1.
- 2.
- 3.

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

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





# O&M MANUAL RESPONSE COMMENTS

**Project:**

**Project No.:**

**Contractor:**

**Date Received:**

**Submittal No.:**

**Item(s):**

**Manufacturer:**

- A – No Exception Taken
- B – Submit Missing Items Noted
- C – Revise & Resubmit Items Noted
- D – Revise & Resubmit Entire Manual
- E – Rejected for the Following Reasons

- A – No Exception Taken:* The manuals submitted are acceptable as Final O&M manuals. Resubmittal is not required.
- B – Submit Missing Items Noted:* Certain items required by the Contract Document are not included in the submitted manual. Submit the items noted (do not resubmit entire O&M manual).
- C – Revise & Resubmit Items Noted:* Certain items required by the Contract Documents are incorrect in the submitted manual. Resubmit the items noted for replacement in the submitted manuals (do not resubmit entire O&M manual).
- D – Revise & Resubmit Entire Submittal:* Corrections noted are considered significant. Make all corrections and resubmit entire submittal. Only items specifically noted by Engineer shall be revised. Any other revisions shall be clearly noted on a separate sheet by the Contractor.
- E – Rejected for the Following Reasons:* The submitted manuals do not comply with requirements of the Contract Documents as noted. Resubmit in accordance with the Contract Documents.

**Comments:**

- 1.
- 2.
- 3.

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

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



**WORK CHANGE DIRECTIVE NO.: [Number of Work Change Directive]**

Owner: City of Oelwein  
Engineer:  
Contractor:  
Project: Oelwein 2023 Plaza Park Improvements  
Contract Name:  
Date Issued: Effective Date of Work Change Directive:  
Owner's Project No.:  
Engineer's Project No.:  
Contractor's Project No.:

Contractor is directed to proceed promptly with the following change(s):

Description:

**[Description of the change to the Work]**

Attachments: *[List documents supporting the change]*

**[List documents related to the change to the Work]**

Purpose for the Work Change Directive:

**[Describe the purpose for the change to the Work]**

Directive to proceed promptly with the Work described herein, prior to agreeing to change in Contract Price and Contract Time, is issued due to:

**Notes to User—Check one or both of the following**

- Non-agreement on pricing of proposed change.
- Necessity to proceed for schedule or other reasons.

**Estimated Change in Contract Price and Contract Times (non-binding, preliminary):**

Contract Price: \$ \_\_\_\_\_ [increase] [decrease] [not yet estimated].

Contract Time: \_\_\_\_\_ days [increase] [decrease] [not yet estimated].

**Basis of estimated change in Contract Price:**

- Lump Sum  Unit Price  Cost of the Work  Other

Recommended by Engineer

Authorized by Owner

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

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_



**CHANGE ORDER NO.: [Number of Change Order]**

Owner: City of Oelwein  
 Engineer:  
 Contractor:  
 Project: Oelwein 2023 Plaza Park Improvements  
 Contract Name:  
 Date Issued: Effective Date of Change Order:

Owner's Project No.:  
 Engineer's Project No.:  
 Contractor's Project No.:

The Contract is modified as follows upon execution of this Change Order:

Description:

**[Description of the change]**

Attachments:

**[List documents related to the change]**

Change in Contract Price	Change in Contract Times [Contract Times as a specific date or a number of days. Note changes in Milestones if applicable]
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for final payment: _____
<b>[Increase] [Decrease]</b> from previously approved Change Orders No. 1 to No. __: _____	<b>[Increase] [Decrease]</b> from previously approved Change Orders No.1 to No.__: _____ Substantial Completion: _____ Ready for final payment: _____
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for final payment: _____
<b>[Increase] [Decrease]</b> this Change Order: \$ _____	<b>[Increase] [Decrease]</b> this Change Order: Substantial Completion: _____ Ready for final payment: _____
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for final payment: _____

Recommended by Engineer (if required)

Accepted by Contractor

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

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

Authorized by Owner

Approved by Funding Agency (if applicable)

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

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_



**FIELD ORDER NO.: [Number of Field Order]**

Owner: City of Oelwein  
Engineer:  
Contractor:  
Project: Oelwein 2023 Plaza Park Improvements  
Contract Name:  
Date Issued: Effective Date of Field Order:  
Owner's Project No.:  
Engineer's Project No.:  
Contractor's Project No.:

Contractor is hereby directed to promptly perform the Work described in this Field Order, issued in accordance with Paragraph 11.04 of the General Conditions, for minor changes in the Work without changes in Contract Price or Contract Times. If Contractor considers that a change in Contract Price or Contract Times is required, submit a Change Proposal before proceeding with this Work.

**Reference:**

Specification Section(s):

Drawing(s) / Details (s):

**Description:**

**[Description of the change to the Work]**

**Attachments:**

**[List documents supporting change]**

**Issued by Engineer**

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

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

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





# Change Proposal Request

## No. X

(Not a Change Order)

Project Name: Oelwein 2023 Plaza Park Improvements	Owner's Contract No.
Project Owner: City of Oelwein	
Project No.	Initiated by: <input type="checkbox"/> Engineer <input type="checkbox"/> Contractor
Contractor:	Date:

**Attention:** The following change in the contract on this project is proposed. Please provide your proposed price for the cost of this change.

- A breakdown of cost shall be provided upon request by the Owner or Engineer.
- Work shall not commence until authorized by the Owner.

Description of the Proposed Change:

1. XX
2. XX
3. XX

Attachments:

By \_\_\_\_\_

All work shall be in accordance with the terms, stipulations, and conditions of the original Contract Documents. If the work herein provided for is Approved by Change Order, the time of completion will be:

Increased  Decreased  Unchanged

by \_\_\_\_\_ calendar days.

This change will:  Add  Deduct  No Change

\$ \_\_\_\_\_

General Contractor \_\_\_\_\_

Date \_\_\_\_\_



**Contractor's Application for Payment**

<b>Owner:</b> _____	<b>Owner's Project No.:</b> _____
<b>Engineer:</b> _____	<b>Engineer's Project No.:</b> _____
<b>Contractor:</b> _____	<b>Contractor's Project No.:</b> _____
<b>Project:</b> _____	
<b>Contract:</b> _____	
<b>Application No.:</b> _____	<b>Application Date:</b> _____
<b>Application Period:</b> From _____ to _____	

1. Original Contract Price	#REF!
2. Net change by Change Orders	#REF!
3. Current Contract Price (Line 1 + Line 2)	#REF!
4. Total Work completed and materials stored to date (Sum of Column G Lump Sum Total and Column J Unit Price Total)	#REF!
5. Retainage	
a. _____ X #REF! Work Completed	#REF!
b. _____ X #REF! Stored Materials	#REF!
c. Total Retainage (Line 5.a + Line 5.b)	#REF!
6. Amount eligible to date (Line 4 - Line 5.c)	#REF!
7. Less previous payments (Line 6 from prior application)	
8. Amount due this application	#REF!
9. Balance to finish, including retainage (Line 3 - Line 6)	#REF!

**Contractor's Certification**

The undersigned Contractor certifies, to the best of its knowledge, the following:

(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;

(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interest, or encumbrances); and

(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

**Contractor:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

<b>Recommended by Engineer</b>	<b>Approved by Owner</b>
<b>By:</b> _____	<b>By:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____
<b>Approved by Funding Agency</b>	
<b>By:</b> _____	<b>By:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____







**CERTIFICATE OF SUBSTANTIAL COMPLETION**

Owner: City of Oelwein Owner's Project No.: \_\_\_\_\_  
Engineer: Confluence, Inc. Engineer's Project No.: 21241  
Contractor: \_\_\_\_\_ Contractor's Project No.: 20-CVN-023  
Project: Plaza Park Improvements  
Contract Name: \_\_\_\_\_

This  Preliminary  Final Certificate of Substantial Completion applies to:

All Work  The following specified portions of the Work:

**[Describe the portion of the work for which Certificate of Substantial Completion is issued]**

Date of Substantial Completion: **[Enter date, as determined by Engineer]**

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work must be as provided in the Contract, except as amended as follows:

Amendments to Owner's Responsibilities:  None  As follows:

**[List amendments to Owner's Responsibilities]**

Amendments to Contractor's Responsibilities:  None  As follows:

**[List amendments to Contractor's Responsibilities]**

The following documents are attached to and made a part of this Certificate:

**[List amendments to Contractor's Responsibilities]**

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

**Engineer**

By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_

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



**NOTICE OF ACCEPTABILITY OF WORK**

Owner: City of Oelwein Owner's Project No.: \_\_\_\_\_  
Engineer: Confluence, Inc. Engineer's Project No.: 21241  
Contractor: \_\_\_\_\_ Contractor's Project No.: 20-CVN-023  
Project: Plaza Park Improvements  
Contract Name: \_\_\_\_\_  
Notice Date: \_\_\_\_\_ Effective Date of the Construction Contract: \_\_\_\_\_

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, \_\_\_\_ ("Owner-Engineer Agreement").

The work was completed on \_\_\_\_\_. The Contract completion date is \_\_\_\_\_.

The total amount due to the contractor for the fulfillment of said Contract is \$ \_\_\_\_\_. The derivation of the total amount is tabulated on the attached sheet.

Ninety-five percent (95%) of the total amount due to the contractor should be paid after acceptance of the construction by the Owner. The remaining five percent (5%) shall then be paid no sooner than thirty (30) days following formal acceptance of the construction by the Owner provided that no unpaid claims exist in connection with this Contract. The Contractor will receive interest on any unpaid balance at the maximum legal rate from and after thirty (30) days following acceptance of the project by the Owner.

This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner-Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner-Engineer Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.

**EJCDC® C-626, Notice of Acceptability of Work.**

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6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract and is subject to Owner's reservations of rights with respect to completion and final payment.

**Signed:**

Confluence, Inc.

By (*signature*): \_\_\_\_\_

Name (*printed*): \_\_\_\_\_

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

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

Iowa Registration No.: \_\_\_\_\_

**Accepted by:**

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

Resolution: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

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

Distribution:

Engineer

Contractor

Owner

**TECHNICAL SPECIFICATION**

**Sitework, utilities and other site-related work shall be based on 2022 Edition of The SUDAS Standard Specifications or latest adopted edition, unless modified herein.**

**SECTION 01 11 00  
PROJECT REQUIREMENTS**

**PART 1 - GENERAL**

**1.1 SCOPE OF WORK**

A. General Description of the Work: This project consists of park improvements including concrete pedestrian walkways and curb lines, utility improvements, a container building for restrooms and another container building for concessions/storage, a play area with tumble mounds and synthetic turf, a cantilevered shade canopy, festoon lighting, and landscape improvements.

**1.2 COORDINATION**

A. The Contractor shall plan, schedule, and coordinate his operations in a manner that will facilitate the simultaneous progress of the Work under the various Sections of this Contract.

B. The Work shall be coordinated with the Owner to minimize interference with any planned events or activities within and adjacent to the building to be demolished.

C. Installation of equipment or devices without regard to coordination of access requirements and confirmation with the Owner's designated representative will result in removal and reinstallation of the equipment and/or changes in the provided access at the Contractor's expense.

D. Work to be Completed Prior to Construction

1. Joint utility locate meeting. Contractor shall set up a One-Call meeting.

2. Preconstruction meeting with the Contractor, the Engineer, City, utilities and other parties that may have interest in the construction. Contractor shall complete exploratory digging (locations not indicated on the plans) and/or potholing (at utility conflicts indicated on the plans) at all potential utility conflict locations and for the purpose of underground soil characteristics determination prior to beginning construction.

3. Contractor shall coordinate with private utilities to relocate any utilities located in the right of way that are in conflict with the proposed project.

E. "Contractor shall provide at least 3 days notice to the City orally or in writing prior to making any water main connection or other work that may impact service. Contractor shall confirm the schedule 1 day prior to commencing this work."

F. "Contractor shall provide at least 48 hours notice (excluding weekends) of any street closure to the City and Engineer. All traffic control requirements in Section 01 50 00 shall apply.

**1.3 SCHEDULE**

- A. The Contractor shall develop a specific and detailed construction schedule indicating coordination of construction, placement into operation of new facilities, and demolition/removal from service of existing facilities.
- B. Each Contractor shall have labor and materials on hand so their work can progress according to the construction schedule. It shall be the responsibility of the General Contractor to see that all Subcontractors adhere to the construction schedule.
- C. Progress meetings:
  - 1. Contractor shall schedule and hold regular progress meetings at least monthly, and at other times as requested by the Engineer, and as required by the progress of the Work.
  - 2. Contractor, Engineer, and all subcontractors active on the site shall be represented at each meeting. Contractor shall at his discretion, or at the request of the Engineer, have representatives of suppliers, manufacturers, and other subcontractors attend meetings.
  - 3. The Engineer shall preside at the meetings and provide for keeping and distribution of minutes. The purpose of these meetings will be to review the progress of the Work, maintain coordination of efforts, discuss changes in schedule, and resolve other problems which may arise.

**1.4 WORK BY PUBLIC UTILITIES**

- A. Work by public utilities shall be coordinated by the Contractor and paid directly to the utility by the Owner unless otherwise included on the Drawings.

**1.5 LAND FOR CONSTRUCTION PURPOSES**

- A. Contractor will be permitted to use available land belonging to or leased by the Owner, on or near the site of the Work, for construction purposes and for the storage of materials and equipment. The location and extent of the areas available to the Contractor shall be as indicated on the Drawings. If the extents of construction are not identified, Contractor shall work within the existing right-of-way unless otherwise directed by the Engineer. Any additional right-of-way desired by the Contractor shall be acquired at his expense, and the Contractor shall hold harmless the Owner and Engineer from claims for damages made by the owners of such additional right-of-way.
  - 1. City may allow use of the park and fenced off areas around the water tower for storage of materials if Contractor and City agree on access, usage, schedules, security, etc.
- B. Any storage of materials and equipment within a flood plain shall be solely at the Contractor's risk. Floodplain boundaries may not be indicated on the plans. Contractor shall verify location and impact of floodplain on project prior to construction.

**1.6 SITE ACCESS**

- A. Access to the construction shall be limited to street and alley right-of-way.
- B. Any damage to the existing road, streets, or alleys caused by the Contractor, including the Contractor's equipment, employees, subcontractors and their employees, material deliveries or other such person under the Contractor's direction, shall be repaired at no additional cost to the Owner to the satisfaction of the Engineer.

**1.7 NOTICES**

- A. The Contractor shall notify owners of adjacent properties and utilities when prosecution of the Work may affect them. When it is necessary to temporarily deny access by owners or tenants to their property, or when any utility service connection must be interrupted, the Contractor shall give notices sufficiently in advance to enable the affected persons to provide for their needs.
- B. Notices, whether given orally or in writing, shall include appropriate information concerning the interruption and instruction on how to limit their inconvenience.

**1.8 LINES AND GRADES**

- A. All Work shall be done to the lines, grades and elevations indicated on the Drawings.
- B. At least two basic horizontal and two vertical control points will be established or designated by the Engineer. These points shall be used as datum for the Work. All additional survey, layout, and measurement Work shall be performed by the Contractor as part of the Work.

**1.9 SALVAGE OF MATERIALS AND EQUIPMENT**

- A. Existing materials and equipment removed and not reused or salvaged to Owner as a part of the Work shall become the Contractor's property and shall be removed from the site as. The Contractor shall be responsible for proper disposal of such materials. Contractor shall carefully remove in a manner to prevent damage to all materials and equipment specified or indicated to be salvaged and reused or to remain property of the Owner. The Contractor shall store and protect salvaged items specified or indicated to be reused in the Work.
- B. Existing materials and equipment removed by the Contractor shall not be reused in the Work except where so specified or indicated. Salvaged items not to be reused in the Work, but to remain Owner's property, shall be delivered by Contractor in good condition to Owner at the project site.
- C. Any items to be salvaged that are damaged in removal, storage or handling through carelessness or improper procedures shall be replaced by Contractor in kind or with new items. Contractor may at his option furnish and install new items in lieu of those specified or indicated to be salvaged and reused, in which case such removed items will become the Contractor's property.

**1.10 CONNECTIONS TO EXISTING FACILITIES**

- A. Unless otherwise specified or indicated, Contractor shall make all necessary connections to existing facilities, including structures, drain lines and utilities such as water, sewer, gas, telecommunications and electric. In each case, Contractor shall receive permission from Owner or the owning utility prior to undertaking connections. Contractor shall protect facilities against deleterious substances and damage.
- B. Connections to existing facilities which are in service shall be thoroughly planned, and all required equipment, materials, and labor shall be on hand at the time of undertaking the connections. Work shall proceed continuously if necessary to complete connections in the minimum time. Operation of valves, hydrants, or other appurtenances on existing utilities, when required, shall be by or under the direct supervision of the owning utility.

**1.11 UNFAVORABLE CONSTRUCTION CONDITIONS**

- A. During unfavorable weather, wet ground, or other unsuitable construction conditions, the Contractor shall confine his operations to work which will not be affected adversely by such conditions.

- B. No portion of the Work shall be constructed under conditions which would affect adversely the quality or efficiency thereof, unless special means or precautions are taken by the Contractor to perform the work in a proper and satisfactory manner.

**1.12 CLEAN UP**

- A. Contractor shall keep the premises occupied by the Contractor free from accumulations of waste materials, debris, and rubbish at all times. Contractor shall provide adequate trash receptacles about the work site, promptly empty containers when filled, and properly dispose of waste materials at his expense. Wastes shall not be buried, burned on the site, or disposed of in storm drains, sewers, streams or waterways. Contractor shall dispose of all materials according to local and state jurisdictional regulations and/or requirements.
- B. Construction materials such as forms and scaffolding shall be neatly stacked by Contractor when not in use. Contractor shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids, and cleaning solutions from surfaces to prevent marring or other damage.

**PART 2 – PRODUCTS - NOT USED**

**PART 3 – EXECUTION - NOT USED**

**END OF SECTION**

**SECTION 01 33 00  
SUBMITTALS**

**PART 1 - GENERAL**

**1.1 SCOPE OF WORK**

- A. This Section outlines submittals required by the General Conditions, Supplementary Conditions and such other submittals by the Contractor to the Owner/Engineer as may be required herein.

**1.2 REFERENCED SECTIONS**

- A. Bonds and Insurance: See Article 2.01 of the General Conditions for submittal requirements.
- B. Preliminary Progress Schedule: See Article 2.03 of the General Conditions for submittal requirements.
- C. Preliminary Schedule of Submittals: See Article 2.03 of the General Conditions for submittal requirements.
- D. Subcontractor and Supplier List: See Article 7.07 of the Supplementary Conditions for submittal requirements.

**1.3 SCHEDULE OF VALUES**

- A. The schedule of values shall be submitted by the Contractor to the Engineer within 10 days after the Effective Date of the Agreement. The sum of the items listed in the schedule of values shall equal the Contract Price.
- B. Such items as Bond, mobilization, and temporary construction facilities may be listed separately on the schedule of values, provided the amounts can be substantiated. Overhead and profit shall not be listed as separate items; overhead and profit shall be proportioned and included in the other items listed in the schedule of values. An unbalanced schedule of values providing for overpayment of Contractor on items of work to be performed first will not be accepted. The schedule of values shall be revised and resubmitted until acceptable to the Engineer. Final acceptance by Engineer shall indicate only consent to the schedule of values as a basis for preparation of applications for progress payments, and shall not constitute an agreement as to the value of each indicated item.

**1.4 SCHEDULE OF PAYMENTS**

- A. The schedule of estimated monthly progress payments shall be submitted by the Contractor to the Engineer within 10 days after the Effective Date of the Agreement. The sum of the listed progress payments shall equal the Contract Price.
- B. The Schedule of Payments shall be in tabular form listing the number of anticipated payments based on the construction schedule with respect to calendar dates. Dates for submittal by Contractor to the Engineer for review, Engineer review period, and action by the Owner shall be indicated for each progress payment. The amounts for materials, completed work, retainage, previous payments and net amount shall be indicated in the Schedule, and the Schedule of Payments shall be revised and resubmitted with each application for progress payment reflecting actual amounts for the previous month and adjustments in future amounts based on previous submittals.



**1.5 PROGRESS REPORTS**

- A. A written progress report shall be furnished to the Engineer with each application for progress payment. Each report shall include sufficient narrative to describe current and anticipated delaying factors, effects on the construction schedule, and proposed corrective action. Any Work reported complete, but which is not readily apparent to the Engineer, must be substantiated with satisfactory evidence.

**1.6 CONSTRUCTION PHOTOGRAPHS**

- A. The Contractor shall take a minimum of 36 photographs of the construction site and pertinent features prior to commencement of the Work and submitted to the Engineer within 5 days. The same views shall be rephotographed upon completion of all construction activities and submitted with Contractor's application for final payment. Twelve (12) to 36 photographs, depending on construction activity, shall be taken each month by the Contractor at the direction of the Engineer and submitted with the Contractor's application for progress payment to document the progress of the work.
- B. Photographs shall be as follows:
  - 1. Digital photographs with a minimum picture quality of 2 megapixel.
  - 2. Each photograph shall be marked with date photographed, description and location of view. It shall be acceptable to number the photographs and submit a table summarizing the dates, descriptions and locations on a separate cover sheet.
  - 3. Submit one copy of a CD, DVD or flash drive containing a digital version of all photographs. Include a Word, Excel or Adobe Acrobat (pdf) file which includes a table summarizing the picture number, photo date, description and location of each photo.

**1.7 SHOP DRAWINGS**

- A. Shop Drawing Schedule: The Contractor shall submit the shop drawing schedule to the Engineer within ten days after the Effective Date of the Agreement. The shop drawing schedule shall be in tabular form listing all materials and equipment for which shop drawings are required, the date for intended submission of the drawing to the Engineer for review, and the date required for its return to avoid delay in any activity beyond the scheduled start date. The schedule shall incorporate the Shop Drawing and Operation and Maintenance Manual numbering system described below.
- B. Submittals:
  - 1. Engineering data covering all equipment, fabricated materials, and construction materials which become a permanent part of the Work under this Contract shall be submitted to Engineer for review. These data shall include drawings and descriptive information in sufficient detail to show the kind, size, arrangement, and operation of component materials and devices; the external connections, anchorages, and supports required; performance characteristics; and dimensions needed for installation and correlation with other materials and equipment.
  - 2. Submittals shall be accompanied by the Shop Drawing/O&M Manual Transmittal form included in these Contract Documents duly signed and dated by the Contractor. Engineer will not accept submittals from anyone other than Contractor.
  - 3. Submittals shall be divided and organized by specification section. Items contained in each submittal may be grouped with like items from the same specification section. However, submittal of items that are specified in separate specification sections in a common shop drawing shall not be accepted. All items contained in the submittal shall be listed separately on the form

with the applicable Specification paragraph number, description and intended use of the item, name of manufacturer/supplier, and submittal reference number; missing information may be cause for rejection without review. When catalog pages are submitted, applicable items shall be clearly identified and inapplicable data marked out.

4. Submittals shall be numbered using the following identification system:
  - a. The general format for the submittal/resubmittal numbering system shall be "ID1-ID2/ID3", where:
    - 1) ID1 is the specification section for the given item as indicated in the Contract Documents.
    - 2) ID2 is the consecutive letter (A, B, C, etc.) indicating the sequence of items submitted under a common specification section.
    - 3) ID3 is the consecutive number (1, 2, 3, etc.) indicating the submittal number for the item (1 for the 1st submittal, 2 for the first resubmittal, 3 for the second resubmittal, etc.).
  - b. Example 1: Say that the water main pipe is specified under Section 02510, and this is the first submittal of items under that section. The submittal number should be 02510-A/1.
  - c. Example 2: Say that the sewer manholes were submitted earlier as submittal number 02530-A/1, but a resubmittal is required. The submittal number for the resubmittal should be 02530-A/2.
  - d. Example 3: The plug valves were submitted earlier as submittal number 15100-A/1. The telescoping valves are also specified in Section 15100, so the submittal number should be 15100-B/1.
5. The Contractor shall submit a single PDF formatted electronic file for each submittal. Electronic files shall be transmitted by e-mail to the Engineer or otherwise delivered to the Engineer in digital format. Each copy of all submittals, regardless of origin, shall be stamped with the approval of Contractor. Contractor's stamp of approval is a representation to the Owner and Engineer that Contractor accepts full responsibility for determining and verifying all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, and that he has reviewed or coordinated each submittal with the requirements of the Work and the Contract Documents.
6. Submittals for all material and/or equipment shall also include the Supplier/ Contractor Statement of Compliance form included in these Contract Documents, duly signed and dated by the supplier or manufacturer and the Contractor. This form shall be prepared by the supplier or manufacturer of the submitted data, stating that the item(s) covered is in compliance with the Contract Documents. Failure to submit this form may be cause for rejection without review. All deviations from the Contract Documents shall be identified on each submittal and shall be tabulated in the Supplier/Contractor Statement of Compliance form and attached to the Shop Drawing Transmittal form. Such submittals, as pertinent to the deviation, shall indicate essential details of all changes proposed by Contractor including modifications to other facilities that may be a result of the deviation and all required piping and wiring diagrams.
7. Submittals for all material and/or equipment shall also include receiving, handling and storage requirements.

8. The Contractor shall accept full responsibility for the completeness of each submittal, and, in the case of a resubmittal, shall verify that all exceptions previously noted by Engineer have been taken into account. In the event that more than one resubmittal is required because of failure of Contractor to account for exceptions previously noted, Contractor shall reimburse Owner for the charges of Engineer for review of the additional submittals.
9. Engineer's review of drawings and data submitted by Contractor will cover only general conformity to the Drawings and Specifications, external connections, and dimensions which affect the layout. Engineer's review does not indicate a thorough review of all dimensions, quantities, and details of the material, equipment, device, or item shown. Engineer's review of submittals shall not relieve Contractor from responsibility for errors, omissions, or deviations, nor responsibility for compliance with the Contract Documents.
10. The Engineer's Shop Drawing Response Comments, appropriately completed, will accompany all submittals when returned to the Contractor. Review status designations listed on the Engineer's response form are defined as follows:
  - a. A - No Exception Taken: Fabrication, delivery, and installation may proceed as indicated in the submittal and in accordance with the Contract Documents.
  - b. B - Address Notations, No Re-submittal: The submittal generally conforms with the design concept and the Contract Documents, and notations noted are considered minor or for Contractor information. Fabrication, delivery, and installation may proceed at the Contractor's discretion in accordance with the submittal, notations, and the Contract Documents. No resubmittal of information is required
  - c. C - Revise and Resubmit Items Noted: The submittal generally conforms to the design concept and the Contract Documents, however certain items require explanation or re-submittal. Make revisions noted for specific items and re-submit only those items and respond to specific questions regarding the submittal.
  - d. D - Revise and Resubmit Entire Submittal: The submittal generally conforms with the design concept and the Contract Documents; however, corrections noted are considered significant. Make all corrections noted and re-submit entire submittal for further review.
  - e. E - Rejected for the Following Reasons: The submittal and/or content do not comply with requirements of the Contract Documents as specifically noted. Resubmit in accordance with Contract Documents.
  - f. I – Engineer Review Not Required: Submittal for information only not requiring engineer approval.
11. Engineer's submittal review period shall be 21 consecutive calendar days in length and shall commence on the first calendar day immediately following the date of arrival of the submittal or resubmittal in the Engineer's office. The time required for delivery of the submittal or resubmittal to the Contractor shall not be considered a part of the submittal review period. Special mailing or delivery requirements of the Contractor shall be at his expense.
12. Any need for more than one re-submittal, or any other delay in obtaining Engineer's review of submittals, shall not entitle Contractor to extension on the Contract Time unless delay of the Work is directly caused by a change in the Work authorized by a Change Order or by failure of Engineer to review any submittal within the submittal review period.

**1.8 SURVEY AND LAYOUT DATA**

- A. All field books, notes, and other data developed by Contractor in performing surveys and layouts as a part of the Work shall be neat and legible and made available to the Engineer for examination throughout the construction period. Copies shall be furnished to the Resident Project Representative for use in checking Contractor's layout.
- B. All such data shall be submitted to Engineer with other documentation required for final acceptance of the Work to be transmitted to the Owner by Engineer with other records upon completion of the Work.

**1.9 RECORD DOCUMENTS**

- A. The Contractor shall submit with the application for final payment the Record Documents to Engineer including Drawings, Specifications, Addenda, written Amendments, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and final samples and shop drawings. The Record Documents shall be in good condition, show the actual installed location and dimensions, and all changes made during construction.

**PART 2 - PRODUCTS – NOT USED**

**PART 3 - EXECUTION – NOT USED**

**END OF SECTION**

**SECTION 01 45 00  
QUALITY CONTROL**

**PART 1 - GENERAL**

**1.1 SCOPE OF WORK**

- A. This section describes quality control testing to be performed by the Owner and Contractor. In general, laboratory and/or field testing will not be required unless specifically required by the Specifications; however, if the quality of the material is questionable or unknown, the Contractor shall furnish acceptable proof of its quality and conformance to the described and specified standards.

**1.2 QUALITY ASSURANCE**

- A. All tests to determine compliance with the Contract Documents shall be performed by an independent commercial testing firm acceptable to the Engineer. The testing firm's laboratory shall be staffed with experienced technicians, properly equipped and fully qualified to perform the tests in accordance with the specified standards.
- B. Testing services provided by Owner are for the sole benefit of Owner; however, test results shall be available to Contractor. Testing necessary to satisfy Contractor's internal quality control procedures shall be the sole responsibility of Contractor.

**1.3 TESTING SERVICES**

- A. Services furnished by Contractor:
  - 1. Contractor shall obtain Engineer's acceptance of the testing firm prior to performance of testing services and shall pay all costs for these services.
  - 2. Unless otherwise specified, Contractor shall provide all testing services in connection with the following:
    - a. Concrete materials and mix design.
    - b. Concrete temperature, slump, air entrainment and compressive/flexural strength.
    - c. Pipe pressure and leakage tests (completed by Contractor with observation by Owner/Engineer is acceptable).
    - d. Disinfection of water piping and sample analysis by a certified laboratory.
    - e. Work to be completed by the Soils Testing Laboratory:
      - 1) Testing of fill and backfill materials including but not limited to gradation, moisture/density and in-situ field moisture/density.
    - f. All other tests and engineering data stipulated in the Specifications and required for Engineer's review
  - 3. Contractor shall furnish all sample materials at no additional cost to Owner and cooperate in the testing activities including sampling. Contractor shall interrupt the Work when necessary to allow testing including sampling to be performed. Contractor shall have no claim for an increase in Contract Price or Contract Times due to such interruptions. When testing activities including

sampling are performed in the field by Engineer, Resident Project Representative, or testing firm's personnel, Contractor shall furnish personnel and facilities to assist in the activities.

4. Transmittal of Test Reports: Written reports of tests and engineering data furnished by Contractor for Engineer's review of materials and equipment proposed for use in the Work shall be submitted as specified for Shop Drawings. The testing firm retained by the Contractor will furnish sufficient copies for Engineer, Owner, and Contractor.
- B. Services furnished by Owner: Unless otherwise specified, Owner shall provide for additional tests at the discretion of Owner and at the Owner's expense.

**1.4 OFFSITE INSPECTION – NOT USED**

**1.5 MANUFACTURER'S FIELD SERVICES – NOT USED**

**PART 2 - PRODUCTS - NOT USED**

**PART 3 - EXECUTION - NOT USED**

**END OF SECTION**

**SECTION 01 50 00  
TEMPORARY FACILITIES**

**PART 1 - GENERAL**

**1.1 SCOPE OF WORK**

- A. This section describes the temporary facilities necessary for the execution of the work by Contractor. The Contractor, in examining the site, shall note that all construction operations and storage of equipment, materials, and tools shall be confined to the limitations of the site and additional lands acquired by the Owner as defined on the Site Plan of the Drawings.

**1.2 TEMPORARY UTILITIES**

- A. Electrical Power: Electrical power is not available at the site. The Contractor shall provide and pay for all charges for power for temporary building(s) and for heating, air conditioning, and operation of major equipment, or for any other use of power by the Contractor.
- B. Voice Communications: Maintaining land line telephone service at the site is not necessary for this project. Communication at the work site shall be by cellular phone. The Contractor shall be responsible for maintaining his own cellular phone service.
- C. Data Communications: Maintaining a physical communication cable line to the site is not necessary for this project. Data communication at the work site shall be by cellular phone. The Contractor shall be responsible for maintaining his own cellular phone service.
- D. Water: All water required for and in connection with the Work to be done under this contract will be furnished by the Owner in the vicinity of the site without charge to the Contractor, provided:
  - 1. The Contractor shall procure such water in the location and in the manner designated by the Engineer and the Owner.
  - 2. The Contractor, at his own expense, shall make authorized connections and provide means for delivering the water to the work site.
  - 3. The Contractor shall prevent waste and needless use of water.
  - 4. The Contractor is responsible for all costs associated with any retesting of the water main.
- E. Sanitary Facilities:
  - 1. The Contractor shall furnish temporary sanitary facilities at the site for the needs of all construction workers and others performing work or furnishing services on the Project. The Contractor's personnel, subcontractor's personnel, and others performing work or furnishing services for the Contractor will not be allowed to use the Owner's sanitary facilities.
  - 2. The Contractor shall enforce the use of such temporary sanitary facilities by all personnel at the site. Sanitary facilities shall be of reasonable capacity, properly maintained throughout the construction period, and obscured from public view to the greatest practical extent. If chemical toilets are provided, at least one toilet will be furnished for each 20 individuals.

- F. Natural or LP Gas: The Contractor shall provide and pay all charges for natural or LP gas service to any facilities operated and maintained by the Contractor.
- G. Utilities serving others: All utility services to residences shall remain active during construction.

### **1.3 MAINTENANCE OF TRAFFIC**

- A. Public Traffic: The Contractor shall conduct his work to minimize interference with public travel, whether vehicular or pedestrian. Such maintenance of traffic will not be required when the Contractor has obtained permission from the owner and tenant of private property or from the authority having jurisdiction over public property involved, to obstruct traffic at the designated point.
  - 1. Contractor is responsible for all traffic control. Control measures shall meet requirements by the Iowa Department of Transportation and/or the local municipal ordinance. All traffic control devices shall be furnished, erected, maintained, relocated, and removed by the Contractor.
- B. Detours: Where required by the authority having jurisdiction that traffic be maintained and whenever it is necessary to cross, obstruct, or close roads, driveways and sidewalks, whether public or private, the Contractor shall provide and maintain suitable and safe detours or other temporary expedients for the accommodation of public and private travel, and shall give reasonable notice to owners before interfering with private drives.
- C. Iowa Department of Transportation (IDOT) Requirements: Contractor shall NOT encroach on DOT ROW at the intersection of Charles Street and 12th Ave SE.
- D. Parking: The Contractor shall identify parking areas for residents unable to access their driveways. Contractor shall also prepare and maintain suitable parking area(s) for use of all Contractor's personnel and others performing work or furnishing services for the Contractor in connection with the Work. No parking by the Contractor's personnel will be permitted where parking may interfere with public traffic or the Owner's operations.

### **1.4 BARRICADES AND TEMPORARY CONSTRUCTION FENCING**

- A. All roads and drives which are closed to traffic shall be protected by effective barricades and warning signs. All open trenches and other excavations shall have suitable barricades, signs, lights, and temporary fencing to provide adequate protection to the public. Other obstructions such as material piles and equipment shall be protected with similar warning signs, fencing, and lights operating from sunset to sunrise.
- B. All barricades, signs, lights, fencing, and other protective devices shall be installed and maintained in conformity with applicable statutory requirements, or as required by the authority having jurisdiction.

### **1.5 ENVIRONMENTAL PROTECTION**

- A. Dust Control:
  - 1. The Contractor shall take reasonable measures to prevent unnecessary dust. Earth surfaces subject to dusting shall be kept moist with water or by application of a chemical dust suppressant. Dust prone materials in piles or in transit shall be covered when practical to prevent blowing.



2. Buildings and operating facilities which are affected adversely by dust shall be adequately protected from dust. Existing and new equipment which may be adversely affected by dust shall be adequately protected.

**B. Temporary drainage facilities and erosion control:**

1. The Contractor shall provide for the drainage of storm water and such water as may be applied or discharged on the site in the performance of the Work. Drainage facilities shall be adequate to prevent damage to the Work, the site, and adjacent property.
2. Existing drainage channels and conduits shall be cleaned, enlarged, or supplemented as necessary to carry all increased runoff attributable to the Contractor's operations. The Contractor shall prevent erosion of soil on the site and adjacent properties resulting from construction activities. Effective measures such as silt fences, dikes, ditch checks, preservation of natural vegetation, and suitable ground cover shall be initiated prior to clearing, grading, excavation, or other operations that will disturb natural protection of soils.

- C. Pollution Control:** The Contractor shall prevent the pollution of soil, surface watercourses, and groundwater by controlling sanitary wastes, sediments, debris, chemicals, solvents, and other substances utilized in the performance of the Work. No sanitary wastes will be permitted to enter any drain other than a sanitary sewer. No sediment, debris, or other substances will be permitted to enter sanitary sewers.

**1.6 PROTECTION OF TREES AND PLANTS**

- A. All trees and other vegetation which must be removed to perform the Work shall be removed and properly disposed of by the Contractor; however, no trees or cultured plants shall be unnecessarily removed unless their removal is indicated on the Drawings. All trees and plants not removed shall be protected against injury from construction operations by the Contractor.
- B. The Contractor shall take extra measures to protect trees designated to be preserved, such as erecting barricades, trimming to prevent damage from construction equipment, and installing underground facilities by hand or tunneling methods. Designated trees shall not be endangered by stockpiling excavated material or storing equipment against the trunk.
- C. When injury or removal of trees designated to be preserved cannot be avoided, or when removal and replacement is indicated on the Drawings, each tree injured beyond repair or removed shall be replaced with a similar tree of the nearest size available.

**1.7 DAMAGE TO EXISTING PROPERTY**

- A. The Contractor will be held responsible for any damage to existing structures, Work, materials, or equipment because of his operations and shall repair or replace any damaged structures, Work, materials, or equipment to the satisfaction of, and at no additional cost to, the Owner. The Contractor shall protect all existing structures and property from damage and shall provide bracing, shoring, or other means necessary for such protection.
- B. The Contractor shall be responsible for all damage to streets, roads, curbs, sidewalks, highways, shoulders, ditches, embankments, culverts, bridges, or other public or private property, which may be caused by transporting equipment, materials, or personnel to or from the Work. The Contractor shall

make satisfactory and acceptable arrangements with the agency having jurisdiction over the damaged property concerning its repair or replacement.

**PART 2 – PRODUCTS – NOT USED**

**PART 3 – EXECUTION – NOT USED**

**END OF SECTION**

SECTION 129300 – SITE FURNISHINGS

PART 1 – GENERAL

1.1 SUMMARY

- A. Section Includes:
  - 1. Container Buildings – Restroom & Concession
  - 2. Shade Canopy
  - 3. Play Mounds with Synthetic Turf
  - 4. Safety Surfacing at Play Area

1.2 SUBMITTALS

- A. See Section 01 33 23 – Submittals, for submittal procedures.
- B. Product Data: Provide manufacturer's data for each type of product indicated.
- C. Samples for Verification: For each type of exposed finish required, prepared on Samples of size indicated below.
- D. Size: Not less than 4-inch-square sheet components.
- E. Manufacturer's Instructions: Indicate conditions requiring special procedures.
- F. Maintenance Data: For site furnishings to include in maintenance manuals.

1.3 QUALITY ASSURANCE

- A. Source Limitations: Obtain each type of site furnishing(s) through one source from a single manufacturer.
- B. Installer Qualifications: Company specializing in performing the work of this section and approved by manufacturer.

1.4 DELIVERY, STORAGE, AND HANDLING

- A. Delivery: Deliver products to site in manufacturer's original, unopened containers and packaging. Upon delivery, examine packages immediately to ensure all products are complete and undamaged.
- B. Storage: Store products in a protected, dry area in manufacturer's unopened containers and packaging.
- C. Handling: Protect product's finish from damage during handling and installation.

**PART 2 PRODUCTS**

**2.1 RESTROOM AND CONCESSION CONTAINERS**

A. Basis-of-Design Product: Subject to compliance with requirements, provide the product indicated on Drawings:

1. Roxbox Containers Inc., 5690 Logan Street, Suite A, Denver, CO 80216: Ph: (303) 997-8875. Or Approved Equal. To be purchased and installed by contractor. Final Design, Colors and Finishes to be coordinated with Owner through shop drawings.

**2.2 SHADE CANOPY**

B. Basis-of-Design Product: Subject to compliance with requirements, provide the product indicated on Drawings:

1. Landscape Structures Inc., 601 7<sup>th</sup> Street South, Delano, MN 55328 PH: 888-438-6574. SkyWays Cantilever 20' x 36' Shade. Or Approved Equal. To be purchased and installed by contractor. Frame and Canopy Colors and Finishes to be coordinated with Owner through shop drawings.

**2.3 PLAY MOUND WITH SYNTHETIC TURF**

C. Basis-of-Design Product: Subject to compliance with requirements, provide the product indicated on Drawings:

1. Custom Play Mound with Synthetic Turf by Forever Lawn Inc., 8007 Beeson Street, Louisville, OH 44641. PH: 866-992-7876. Custom mound formed with EPS foam core, expandable urethane glue, protective EPP foam layer, nailer board, and premium backed Playground Grass. Or Approved Equal. To be purchased and installed by contractor. Color and type of synthetic turf to be coordinated with Owner prior to ordering.
2. Standard Play Mound – 12' with Synthetic Turf by Forever Lawn Inc., 8007 Beeson Street, Louisville, OH 44641. PH: 866-992-7876. Custom mound formed with EPS foam core, expandable urethane glue, protective EPP foam layer, nailer board, and premium backed Playground Grass. Or Approved Equal. To be purchased and installed by contractor. Color and type of synthetic turf to be coordinated with Owner prior to ordering.

## 2.4 SAFETY SURFACING AT PLAY AREA

D. Basis-of-Design Product: Subject to compliance with requirements, provide the product indicated on Drawings:

1. PlayBound Poured-In-Place Surfacing by Surface America, Inc., 505 Aero Drive, Suite 1, Cheektowaga, NY 14225. PH: 800-999-0555. 1-3/4" thick, dual-layer poured rubber. Or Approved Equal. To be purchased and installed by certified installation contractor. Color and type of poured-in-place rubber to be coordinated with Owner prior to ordering.

## PART 3 EXECUTION

### 3.1 EXAMINATION

A. Examine areas and conditions, with Installer present, for compliance with requirements for correct and level finished grade, mounting surfaces, installation tolerances, and other conditions affecting performance.

1. Proceed with installation only after unsatisfactory conditions have been corrected.

### 3.2 INSTALLATION, GENERAL

A. Comply with manufacturer's written installation instructions unless more stringent requirements are indicated. Complete field assembly of site furnishings where required.

B. Unless otherwise indicated, install site furnishings after landscaping and paving have been completed.

C. Install site furnishings level, plumb, true, and securely anchored at locations indicated on Drawings.

### 3.3 CLEANING

A. After completing site furnishing installation, inspect components. Remove spots, dirt, and debris. Repair damaged finishes to match original finish or replace component.

### 3.4 WASTE MANAGEMENT

A. Separate and dispose of waste in accordance with the Project's Waste Management Plan. Refer to Section 01 74 19 - Construction Waste Management and Disposal.

SECTION 0329300 – PLANTS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

Drawings and General Provisions of Contract, including Bidding Requirements, General and Supplementary Conditions and Division I Specification Sections, apply to work specified in this Section.

1.2 WORK INCLUDED

Provide all labor, materials, equipment and supervision required for the installation of all proposed plant material.

1.3 DELIVERY, HANDLING AND TEMPORARY STORAGE

- A. Install plant material on the day of delivery to the site; in the event this is not possible, protect that stock not planted.
- B. Keep plant material that cannot be planted immediately after delivery in the shade, well protected with soil, wet moss or other acceptable material and well watered.
- C. Do not bind plants with wire or rope at any time so as to damage the bark or break branches.
- D. Lift and handle plants from the bottom of the ball only.
- E. Plants moved with a ball will not be accepted if the ball is cracked, loose or broken before or during planting operations.
- F. Deliver fertilizer to site in original, unopened containers, each bearing manufacturer's guaranteed analysis.
- G. Store packaged materials off ground and protect from moisture.

1.4 CODES, PERMITS AND FEES

- A. Obtain any necessary permits for this Section of Work and pay any fees required for permits.
- B. The entire installation shall fully comply with all local and state laws and ordinances, and with all established codes applicable thereto.

1.5 JOB CONDITIONS

- A. Existing Utilities:

1. Locate existing underground utilities in areas of work. If utilities are to remain in place, provide adequate means of support and protection during this work.
2. Underground utilities shown on the drawings have been taken from existing public records, Owner's records available as-built drawings and are correct to the best of our knowledge, provided for information only.
3. Should uncharted, or incorrectly charted, piping or other utilities be encountered during excavation, consult Utility Owner immediately for directions. Cooperate with Owner and utility companies in keeping respective services and facilities in operation. Repair damaged utilities caused by Contractor's negligence to the satisfaction of Utility Owner at no cost to the Project Owner.
4. Do not interrupt existing utilities serving facilities occupied and used by Owner or others, during occupied hours, except when permitted in writing by Owner's Representative and then only after acceptable temporary utility services have been provided.
5. Provide minimum of 48-hour notice to Owner and Owner's Representative and receive written notice to proceed before interrupting any utility.

**B. Protection of Persons and Property:**

1. Barricade open excavations occurring as part of this work and post with warning lights.
2. Operate warning lights as recommended by authorities having jurisdiction.
3. Protect structures, utilities, sidewalks, pavements, and other facilities from damage caused by settlement, lateral movement, undermining, washout and other hazards created by this work.
4. Perform excavation within drip-line of large trees to remain by hand, and protect the root system from damage or dryout to the greatest extent possible. Maintain moist condition for root system and cover exposed roots with burlap. Paint root cuts of 1" diameter and larger with emulsified asphalt tree paint.

**1.6 INSPECTION AND APPROVAL**

- A. All materials described and specified herein are subject to inspection and approval by Owner's Representative.
- B. Materials may be inspected by the Owner's Representative at source of supply or the Owner's Representative may require the Contractor to submit color slides and/or photographs which illustrate the specified plant material at the source of supply.
- C. This inspection does not waive the right to reject any material after it has been delivered to the site and/or installed.

**1.7 INITIAL INSPECTION AND ACCEPTANCE**

- A. Initial inspection of the planting to determine completion of contract work, exclusive of possible replacement of plants, will be made by the Owner's Representative upon completion of the work.
- B. Initial inspection will not be conducted unless all items of work as outlined in 3. EXECUTION have been completed.

- C. Five (5) days prior to the anticipated date of inspection submit written notice requesting inspection to Owner's Representative.
- D. After inspection, the Contractor will be notified in writing, by the Owner, of initial acceptance of inspected work exclusive of the possible replacement of plants and correction of deficiencies in the requirements for completion of the work.
- E. Maintain, as specified, areas not acceptable until corrections are completed and re-inspection is conducted.
- F. If a significant time delay (sixty to ninety days) is encountered, through no fault of the Landscape Contractor, inspection and initial acceptance of a major portion of the plantings may be granted.
- G. All plants shall be alive and healthy at the time of initial acceptance.
- H. Replacement of rejected plants before initial acceptance to meet the terms of initial acceptance shall not be considered a part of the guaranty and replacement requirement of this Specification.

**1.8 GUARANTEE, REPLACEMENT AND FINAL INSPECTION:**

- A. Guarantee plants for the duration of one (1) full year after they are initially accepted as defined herein.
- B. Plants shall be alive and in good, healthy and flourishing condition of growth at the end of the guaranty period.
- C. At the end of the guaranty period, final inspection will be made by Owner's Representative upon written notice requesting such inspection; submit notice to Owner's Representative at least ten (10) days before the anticipated date of inspection.
- D. Any plant, required under this Contract, that is dead or not in a vigorous, thriving condition, as determined by Owner's Representative at the time of Final Inspection, will be removed from the site.
- E. Plants that are missing at the time of Final Inspection are to be installed during the specified planting season when weather and site conditions permit.
- F. In case of any questions regarding the condition and satisfactory establishment of a rejected plant, the Landscape Contractor may elect to allow such plant to remain through another complete growing season. If at that time the rejected plant is found to be dead, in an unhealthy or badly impaired condition, it shall be replaced.
- G. After Initial Acceptance, replace plants (once during or at the end of the guaranty period) that are observed to be dead or in a badly impaired condition.
- H. One replacement after initial acceptance shall constitute fulfillment of Contractor's guaranty for the particular plant replaced.



- I. Replacement Plants: Plants of the same kind and size as specified in the Plant Schedule; furnished and planted as specified herein.
- J. Replacement Plants: Guyed or staked, mulched, wrapped, fertilized, pruned and re-stored to original condition as originally specified at no cost to Owner.
- K. Make all necessary repairs to grades, lawns and paving required because of plant replacements,  
at no cost to the Owner.
- L. Plant Replacement Cost: Borne by Contractor except for possible replacements resulting from removal, loss or damage due to occupancy of project in any part, vandalism, civil disobedience, or acts of neglect on the part of others, physical damage by animals, vehicles, fire, etc., or losses due to curtailment of water by local authority, or to "Acts of God". Floods, tornadoes, wind of hurricane force, and hail are not normal and the damage they do cannot be calculated in a bid.

## PART 2 - PRODUCTS

### 2.1 PLANT MATERIALS

- A. Plant Schedule: A list of plant materials is scheduled on the Drawing. In the event of any discrepancy between this schedule and the Plan Drawing showing the plants, the Plan Drawing shall govern.
- B. Certification of inspection of plant materials required by Federal, State or other governmental agencies to accompany all shipments to be furnished to the Owner's Representative.
- C. Nomenclature: The names of plants required under this Contract conform to those given in the "Standardized Plant Names", 1942 Edition, prepared by the American Joint Committee on Horticultural Nomenclature. Names of varieties not included therein conform generally with names accepted in the nursery trade.
- D. Standards: All plant materials, grading, sizes, methods, etc., are to conform to the Standards of the American Association of Nurserymen, Inc., as contained in their current publication "American Standard for Nursery Stock", (ANSI Z60.1-1996). In the event there is a discrepancy between these standards and this Specification, the most restrictive requirement shall govern.
- E. Labeling: Legibly tag all plants as to name and size.
- F. Species and Variety: True to name as specified. Plants approved as true to name at time of initial acceptance which, during the guaranty period, exhibit characteristics indicating they are not true to name will be replaced at no cost to the Owner.
- G. Availability: Before submitting his bid, the Contractor shall have investigated the sources of supply and satisfied himself that he can supply the listed plants in the size, variety and quality listed and specified. Failure to take this precaution will not relieve the Contractor from his responsibility for furnishing and installing all plant ma-

materials in strict accordance with the Contract Documents without additional cost to the Owner.

H. Quality:

1. Growth habit typical for species and as indicated on the Plant Schedule.
2. Sound, healthy, vigorous and free from insect pests, plant diseases and injuries.
3. One sided plants or plants taken from tightly planted nursery rows will be rejected.

I. Size and Form:

1. Equivalent or exceed measurements specified in the Plant Schedule.
2. Measured before pruning with branches in normal position. Height and spread specified refers to main body of plant and not from tip to tip of branches or roots.
3. Caliper of trees less than four inches (4") - taken six inches (6") above ground level. Trees four inches (4") and over - measured one foot (1') above ground level.
4. Specified trunk height can be obtained by pruning lower branches of a plant after the plant has been installed; however, pruning to achieve specified trunk height is to occur only after Owner's Representative has inspected plant and directed Contractor as to the amount of pruning required.
5. Where specified by caliper, no one stem of a specific multi-stemmed plant shall be smaller than the caliper size specified.

J. Balled and Burlapped Plants:

1. Designated as "B&B"; dug with firm, natural balls of earth of sufficient diameter and depth to encompass the fibrous and feeding root system necessary for full recovery of the plant.
2. In compliance with ANSI Z60.1-1996.
3. Balls: Firmly wrapped with burlap or similar biodegradable material and bound with twine, cord, or wire mesh.
4. Where necessary to prevent breaking or cracking of the ball during the process of planting, the ball may be secured to a platform. Broken or loose balls will not be accepted.
5. A container grown plant, in lieu of a "B&B" plant, will be accepted provided it meets specified sizes and complies with ANSI Z60.1-1996.
6. A machine moved plant, in lieu of a "B&B" plant, will be accepted provided it meets specified sizes and complies with ANSI Z60.1-1996.

K. Container Grown Plants:

1. Container size as specified in Plant Schedule.
2. In compliance with ANSI Z60.1-1996.

2.2 PLANTING SOIL

- A. Planting Soil: ASTM D 5268 topsoil, with pH range of 5.5 to 7, a minimum of 6 percent organic material content; free of stones 1 inch or larger in any dimension and other extraneous materials harmful to plant growth. Mix ASTM D 5268 top-

soil with the following soil amendments in the following quantities to produce planting soil:

1. Planting Soil to consist of Sand (2.0-.5mm) at 50-60%, silt (.05-.002mm) at 25%-35%, Clay less than 15% and Organic Matter from 5%-15%. Soil report to be submitted for approval of mix.
- B. Dispose of soil excavated from planting hole that is determined not to be of quality required or is not needed to be used for planting soil.

### 2.3 INORGANIC SOIL AMENDMENTS

- C. Lime: ASTM C 602, agricultural liming material containing a minimum of 80 percent calcium carbonate equivalent and as follows:
1. Class: T, with a minimum of 99 percent passing through No. 8 sieve and a minimum of 75 percent passing through No. 60 sieve.
  2. Class: O, with a minimum of 95 percent passing through No. 8 sieve and a minimum of 55 percent passing through No. 60 sieve.
  3. Provide lime in form of ground dolomitic limestone.
- D. Sulfur: Granular, biodegradable, and containing a minimum of 90 percent sulfur, with a minimum of 99 percent passing through No. 6 sieve and a maximum of 10 percent passing through No. 40 sieve.
- E. Iron Sulfate: Granulated ferrous sulfate containing a minimum of 20 percent iron and 10 percent sulfur.
- F. Aluminum Sulfate: Commercial grade, unadulterated.
- G. Perlite: Horticultural perlite, soil amendment grade.
- H. Agricultural Gypsum: Minimum 90 percent calcium sulfate, finely ground with 90 percent passing through No. 50 sieve.
- I. Sand: Clean, washed, natural or manufactured, and free of toxic materials.
- J. Diatomaceous Earth: Calcined, 90 percent silica, with approximately 140 percent water absorption capacity by weight.
- K. Zeolites: Mineral clinoptilolite with at least 60 percent water absorption by weight.

### 2.4 ORGANIC SOIL AMENDMENTS

- A. Compost: Well-composted, stable, and weed-free organic matter, pH range of 5.5 to 8; moisture content 35 to 55 percent by weight; 100 percent passing through 1/2-inch sieve; soluble salt content of 5 to 10 decisiemens/m; not exceeding 0.5 percent inert contaminants and free of substances toxic to plantings; and as follows:
1. Organic Matter Content: 50 to 60 percent of dry weight.

2. Feedstock: Agricultural, food, or industrial residuals; biosolids; yard trimmings; or source-separated or compostable mixed solid waste.
- B. Sphagnum Peat: Partially decomposed sphagnum peat moss, finely divided or granular texture, with a pH range of 3.4 to 4.8.
- C. Muck Peat: Partially decomposed moss peat, native peat, or reed-sedge peat, finely divided or of granular texture, with a pH range of 6 to 7.5, and having a water-absorbing capacity of 1100 to 2000 percent.
- D. Wood Derivatives: Decomposed, nitrogen-treated sawdust, ground bark, or wood waste; of uniform texture and free of chips, stones, sticks, soil, or toxic materials.
- E. In lieu of decomposed wood derivatives, mix partially decomposed wood derivatives with ammonium nitrate at a minimum rate of 0.15 lb/cu. ft. of loose sawdust or ground bark, or with ammonium sulfate at a minimum rate of 0.25 lb/cu. Ft of loose sawdust or ground bark.
- F. Manure: Well-rotted, unleached, stable or cattle manure containing not more than 25 percent by volume of straw, sawdust, or other bedding materials; free of toxic substances, stones, sticks, soil, weed seed, debris, and material harmful to plant growth.

## 2.5 FERTILIZER

- A. Bonemeal: Commercial, raw or steamed, finely ground; a minimum of 4 percent nitrogen and 20 percent phosphoric acid.
- B. Superphosphate: Commercial, phosphate mixture, soluble; a minimum of 20 percent available phosphoric acid.
- C. Commercial Fertilizer: Commercial-grade complete fertilizer of neutral character, consisting of fast- and slow-release nitrogen, 50 percent derived from natural organic sources of urea formaldehyde, phosphorous, and potassium in the following composition:
  1. Composition: 1 lb/1000 sq. ft. of actual nitrogen, 4 percent phosphorous, and 2 percent potassium, by weight.
  2. Composition: Nitrogen, phosphorous, and potassium in amounts recommended in soil reports from a qualified soil-testing laboratory.
- D. Slow-Release Fertilizer: Granular or pelleted fertilizer consisting of 50 percent water-insoluble nitrogen, phosphorus, and potassium in the following composition:
  1. Composition: 20 percent nitrogen, 10 percent phosphorous, and 10 percent potassium, by weight.
  2. Composition: Nitrogen, phosphorous, and potassium in amounts recommended in soil reports from a qualified soil-testing laboratory.

- E. Chelated Iron: Commercial-grade FeEDDHA for dicots and woody plants, and commercial-grade FeDTPA for ornamental grasses and monocots.
- F. Uniform in composition, dry and free flowing.
- G. Fertilizer which becomes caked or otherwise damaged making it not suitable for use, will not be accepted.

**2.6 MULCH**

- A. Shredded Hardwood Mulch, 1-3" dia.
- B. 3" min. depth, locations as shown on drawings.
- C. Furnish in bags or bulk.
- D. Submit sample for approval by Owner's Representative.

**2.7 STAKING, GUYING AND WRAPPING MATERIALS:**

- A. Stakes: Similar or equivalent to steel farm fence posts, green vinyl coated or painted black with a rust inhibiting paint. All stakes the same color.
- B. Wire: No. 11 gauge pliable galvanized wire.
- C. Hose: New green or black 2-ply one-half inch (1/2") diameter reinforced rubber garden hose; all hose the same color.
- D. Guying cable: Five-strand, three-sixteenth inch (3/16") diameter, steel cable. Attach wire cable clamps and turnbuckles (galvanized or aluminum).
- E. Steel auger type screw anchor with twenty-four inch (24") rod length and three inch (3") plate.
- F. Wrapping material: Heavy crinkle crepe tree wrapping paper in strips four to ten inches (4-10") wide.

**2.8 STEEL EDGING:**

- A. Product: Permaloc StructurEdge, 3/16" (4.8mm) x 5" (57mm) high, extruded aluminum, 6063 alloy, T6 hardness, paver restraint edging for straight-line and curvilinear applications in corrugated L-shaped profile, as manufactured by Permaloc Corporation, Holland MI 49424, telephone (800) 356-9660 or (616) 399-9600. Horizontal base shall have holes spaced 4 inches (102 mm) apart along its length to receive spikes, or equal.
- B. Thickness: 3/32 inch (2.4 mm) gage section shall have 0.170 inch (4.32 mm) thick exposed top lip, 1/8 inch (3.2 mm) gage section shall have 0.190 inch (4.83 mm) thick exposed top lip, and 3/16 inch (4.8 mm) gage section shall have 0.210 inch (5.33 mm) thick exposed top lip.
- C. Length: 8 feet (2.44 meters).

- D. Connection Method: Section ends shall splice together with horizontal 0.060 inch (1.52 mm) thick x 1 inch (25 mm) wide x 4 inches (102 mm) long aluminum sliding connector.
- E. Anchoring: 3/8 inch x 10 inches (9.5 mm x 254 mm) bright spiral steel spike. Use plastic washers if desired.
- F. Finish: Mill Finish.
- G. Warranty: 15-year limited material warranty for paver restraint edging from manufacturing defects in workmanship or material.

2.9 WEED PREVENTER:

- A. Dacthal or equivalent.
- B. For groundcovers and shrub plant beds only.
- C. Apply as per manufacturer's recommendation.

PART 3 - EXECUTION

3.1 COMMENCEMENT DATE:

- A. At the earliest possible date site conditions permit.

3.2 PLANTING SEASON FOR BALLED AND BURLAPPED AND CONTAINER GROWN PLANTS:

- A. Deciduous trees and shrubs: April 1 to June 1 and August 15 to November 15.
- A. Evergreen trees and shrubs: April 1 to June 1 and August 15 to October 15.

3.3 PREPARATION:

- A. Stake out on the ground the locations of all plants and obtain approval of the Owner's Representative before excavation is begun.
- B. Relocate incorrectly located plants at no expense to the Owner.

3.4 EXCAVATION:

- A. Excavate the plant pit, centered at the location stake.
- B. Planting soil for backfilling shall be kept separate from excavated subsoil.

- B. Excavate the plant pit large enough to provide for at least six inches (6") of planting soil backfill around and beneath the root system.
- C. Where surface or subsurface conditions prevent digging a plant pit to specified dimensions, obtain approval from Owner's Representative to modify location of pit dimensions.

**3.5 DRAINAGE TEST:**

- A. Randomly select a representative number of shrub plant pits in each shrub planting area and test for drainage prior to planting.
- B. Test all tree plant pits for drainage.
- D. Fill each selected plant pit with water and let stand for twenty-four (24) hours.
- E. Do not proceed with planting where drainage problems are apparent.
- F. Report to the Owner's Representative areas which do not drain within twenty-four (24) hours.

**3.6 PLANTING:**

**A. Groundcover:**

1. Cultivate groundcover areas six inches (6") deep and grade smooth immediately before planting groundcover plants.
2. Before planting, spread commercial fertilizer at the rate of one-eighth (1/8) pound per plant over entire groundcover area, and cultivate into top six inches (6") of soil.
3. Plant groundcover to within one foot (1') of trunk of tree or shrub planted within the area unless noted otherwise on the Drawings.
4. After planting and before mulching, spread weed preventer over plant bed soil surface as per manufacturer's recommendation.
5. Install mulch to depth of three inches (3") over entire groundcover bed.

**B. Balled and Burlapped and Container Grown Plants:**

1. Center the root ball in the plant pit resting on six inches (6") of well tamped planting soil.
2. Backfill the plant hole with planting soil placed in layers around the root ball.
3. Carefully tamp each layer in place in a manner to avoid injury to roots or ball.
4. When approximately two-thirds (2/3) of the plant hole has been backfilled, fill the hole with water and allow the soil to settle around the roots.
5. Set top of root ball level with the surrounding grade as shown in the Planting Details.
6. Place mulch as indicated in the Planting Details.
7. Cut cord or wire securing burlap at base of tree.

**3.7 FERTILIZING B&B AND CONTAINER GROWN PLANTS:**

- A. Trees and Shrubs: Mix with backfill.
- B. Large shade trees: Two (2) pounds per inch of caliper.
- C. Small trees: One (1) pound per inch of caliper.
- D. Shrubs: One-quarter (1/4) pound per foot height.
- E. Evergreens: One-eighth (1/8) pound per foot height or spread.
- F. Vines and groundcover: One-eighth (1/8) pound per plant; place in bottom of plant pit.
- G. Herbaceous plants: One-eighth (1/8) pound per plant.

**3.8 STAKING:**

- A. Stake evergreen trees eight feet (8') in height and less and deciduous trees having a trunk caliper of three inches (3") or less.
- B. Use two (2) stakes driven vertically to depth to provide a firm structure.
- C. Attach wire to the stake at a point approximately four feet (4') from the ground and attach to the tree at the same height.
- D. Encase the wire in rubber hose to avoid direct contact between wire and bark of tree.
- E. Place stakes opposite each other in an east-west direction and drive with a slight tilt away from each at the top so that slight tension can be placed on the wires when attached.
- F. All staking material may be salvaged by the Landscape Contractor twelve to eighteen (12-18) months after planting.

**3.9 GUYING:**

- A. Anchor and guy evergreen trees over eight feet (8') in height and deciduous trees having a trunk caliper of more than two and one-half inches (2 1/2") with three (3) guying cables, unless shown otherwise on the Drawings, Plant Schedule or Planting Details.
- B. Space three (3) guys equally about each tree.
- C. Each guy will consist of three-sixteenth inch (3/16") cable attached to the tree trunk at an angle of thirty (30) to forty-five (45) degrees at about two-thirds (2/3) of the height of the tree and anchored at the ground to earth anchors as specified.
- D. Make all cable fastenings with an approved cable clamp and turnbuckle.



- E. All guying materials may be salvaged by the Landscape Contractor twelve to eighteen (12-18) months after planting.

3.10 WRAPPING:

- A. Promptly after planting, wrap trunks of all deciduous trees with tree wrapping paper spirally from ground line to bottom branches.
- B. Neat and snug; materials held in place by a suitable cord; tapes are unacceptable.

3.11 EROSION CONTROL NETTING:

- A. Install in accordance with manufacturer's recommendations.
- B. Install at the location shown on drawings.

3.12 PRUNING AND REPAIR:

- A. Prior to initial inspection, prune all trees and shrubs and repair any injuries.
- B. Limit the amount of pruning to the minimum necessary to remove dead or injured branches and twigs.
- C. Maintain the natural habit, shape and specified size of the plant.
- D. Make all cuts flush; leave no stubs.
- E. On all cuts over three-quarters inch (3/4") in diameter and bruises or scars on the bark, trace the injured cambium back to living tissue and remove; smooth and shape wounds so as not to retain water and coat the treated area with an approved antiseptic tree paint.

3.13 MULCH:

- A. Install at consistent depth as shown on drawings.
- B. Sub-grade surface of areas to receive mulch shall be sloped to drain, smooth and free of ruts and clods.

3.14 CLEAN UP:

- A. Remove any soil, peat or similar material that has been brought onto paved areas by planting operations keeping those areas clean at all times.
- B. Upon completion of the planting, dispose of all excess soil and stones resulting from the planting operation.
- C. Remove all debris, resulting from planting operations, from the site.

3.15 MAINTENANCE:

- A. Begin immediately following installation of plants and continue until initial acceptance.
- B. Include watering, weeding, cultivating, mulching, removal of dead material, resetting plants to proper grades or upright position and restoration of the planting saucer, and other necessary operations.
- C. If any planting is done after lawn preparation, provide proper protection to lawn areas and repair any damage resulting from planting operation promptly at no cost to the Owner.
- D. Landscape Contractor is responsible for maintaining plants from their arrival on site until the punch list approval and initial acceptance. Maintenance after initial acceptance of the planting will be performed by the Owner.
- E. Furnish detailed written recommended maintenance program to the Owner with a copy to Owner's Representatives, prior to initial acceptance of the various planting areas.
- F. Maintenance performed by the Owner in accordance with recommended program will not affect the Landscape Contractor's obligation to guarantee and replace defective plants as herein described.