

March 19th, 2025



Esteemed City Council Members,

Enclosed are the bid specifications, contract details, and blueprint plan drawings for the engineered demolition of 27 South Frederick, as well as the replacement of the stairwell entry section of the neighboring property at 29 South Frederick. These plans have been developed in collaboration with VJ Engineering and in coordination with Mike Leo, the owner of 29 South Frederick, to ensure a mutually agreeable resolution.

This project is a critical step toward addressing the hazardous conditions of 27 South Frederick, a property the city acquired through the nuisance abatement legal process, which began in 2021. We request your review of these materials to initiate the public bidding process, allowing us to seek bids and select a contractor to complete the project. Our goal is to begin demolition on August 4, 2025, ensuring it does not interfere with RAGBRAI.

Thank you for your time and consideration.

Sincerely,
David Kral
Building Official



20 2nd Ave. S.W.
Oelwein, Iowa 50662

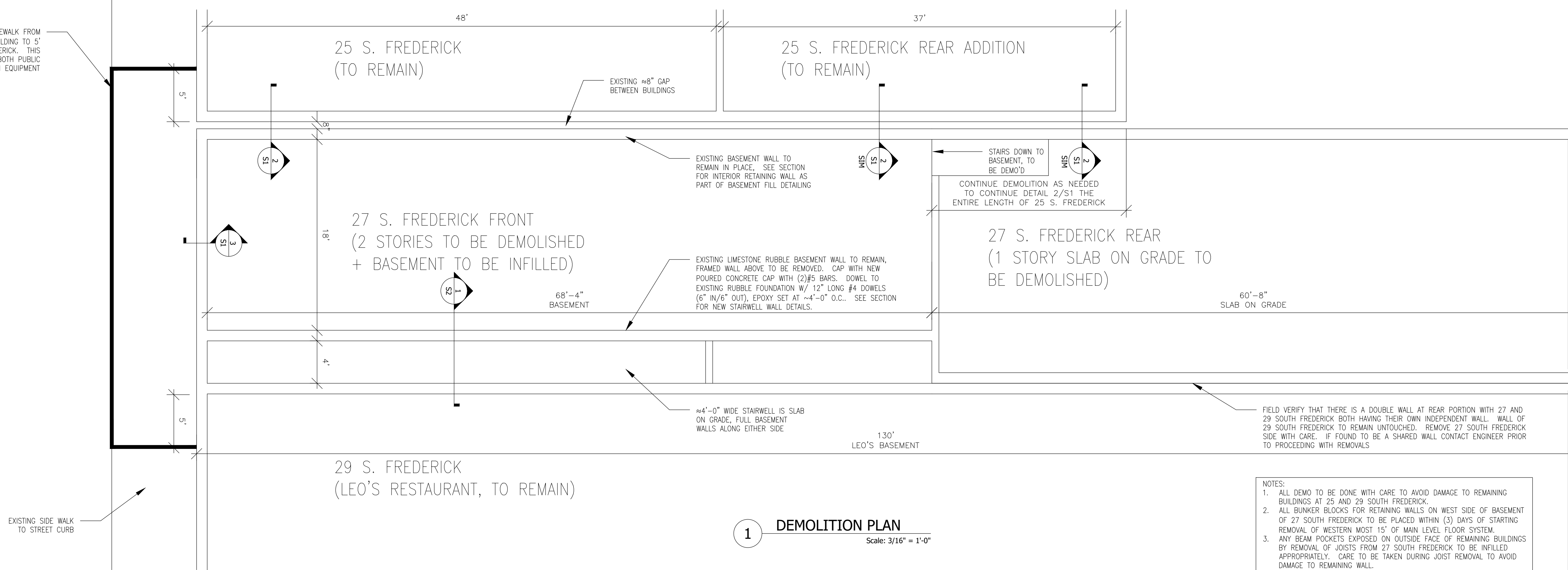


buildingadmin@CityofOelwein.org
www.CityofOelwein.org



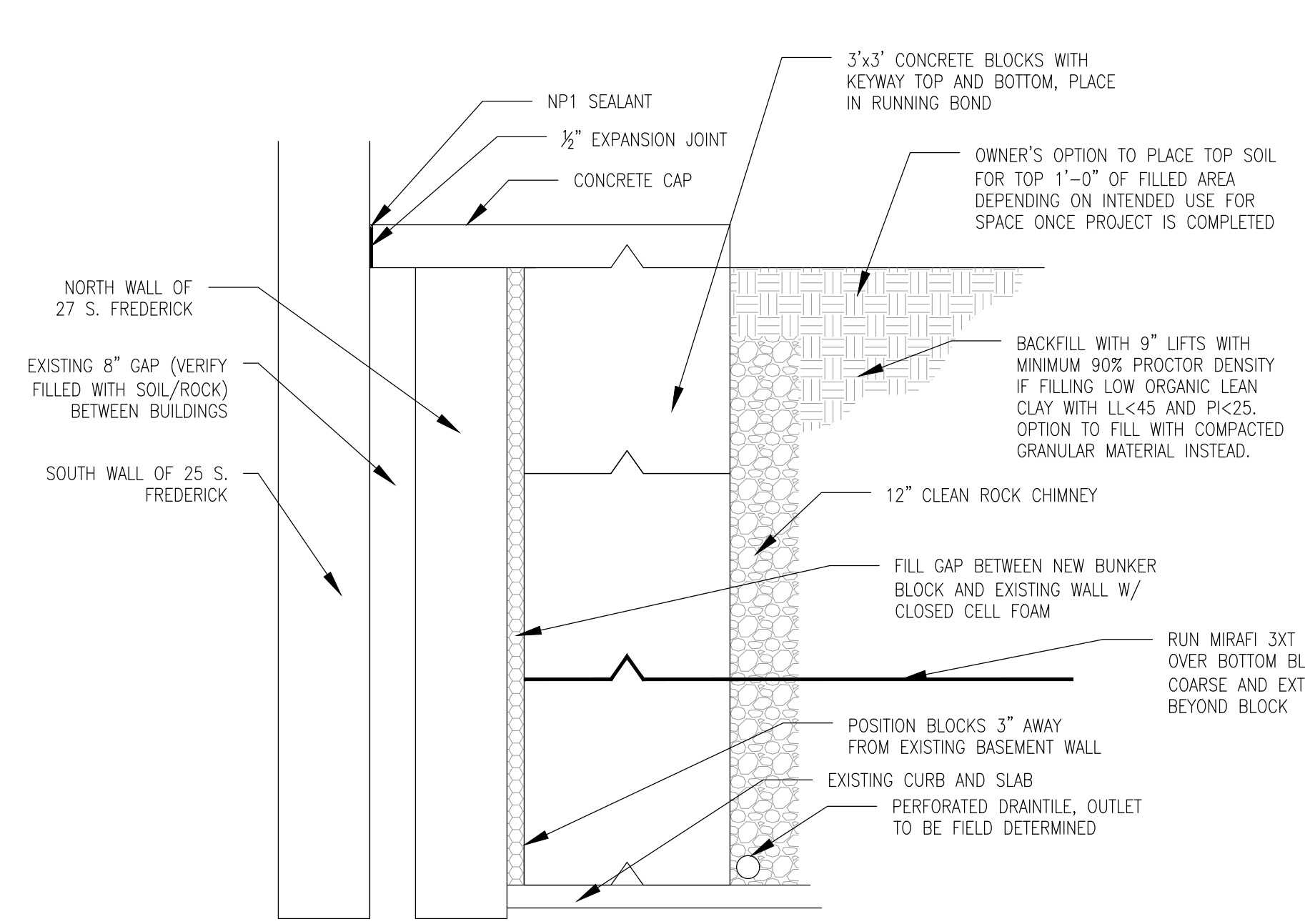
Phone: (319) 283-5862
Fax: (319) 283-4032

FENCE OFF ALL OF SIDEWALK FROM CORNER OF LEO'S MAIN BUILDING TO 5' PAST CORNER OF 25 S. FREDERICK. THIS IS TO BE FENCED FROM BOTH PUBLIC ACCESS AND CONSTRUCTION EQUIPMENT

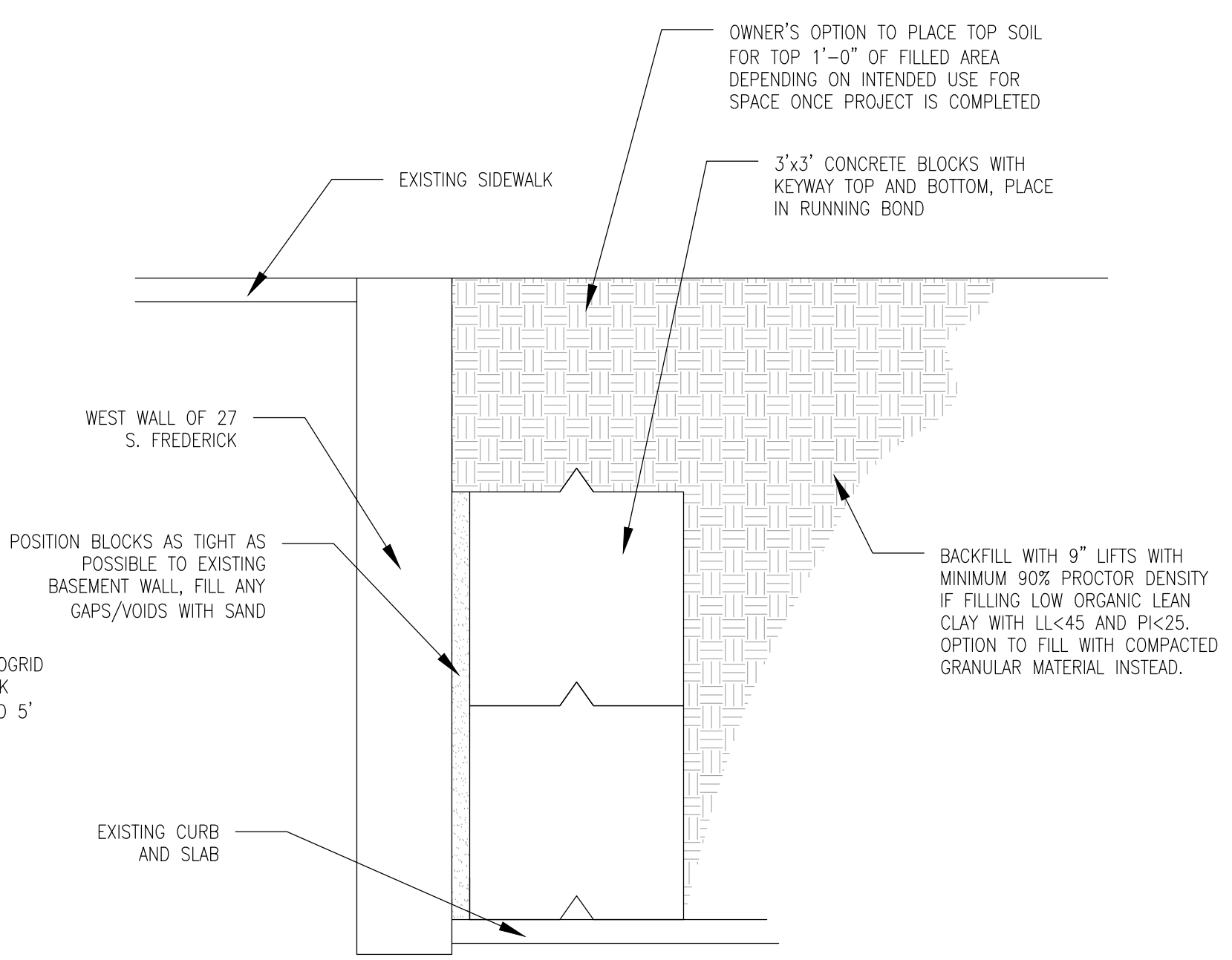


1 DEMOLITION PLAN
Scale: 3/16" = 1'-0"

- NOTES:
- ALL DEMO TO BE DONE WITH CARE TO AVOID DAMAGE TO REMAINING BUILDINGS AT 25 AND 29 SOUTH FREDERICK.
 - ALL BUNKER BLOCKS FOR RETAINING WALLS ON WEST SIDE OF BASEMENT OF 27 SOUTH FREDERICK TO BE PLACED WITHIN (3) DAYS OF STARTING REMOVAL OF WESTERN MOST 15' OF MAIN LEVEL FLOOR SYSTEM.
 - ANY BEAM POCKETS EXPOSED ON OUTSIDE FACE OF REMAINING BUILDINGS BY REMOVAL OF JOISTS FROM 27 SOUTH FREDERICK TO BE INFILLED APPROPRIATELY. CARE TO BE TAKEN DURING JOIST REMOVAL TO AVOID DAMAGE TO REMAINING WALL.
 - STAIRCASE ON NORTH SIDE OF LEO'S RESTAURANT (29 SOUTH FREDERICK) TO BE REBUILT IN KIND AFTER NEW EXTERIOR WALL IS CONSTRUCTED. IF EXISTING CONSTRUCTION METHODS ARE NOT REPEATABLE DUE TO EXPOSED CONDITIONS ONCE DEMOLITION HAS BEGUN, CONTACT ENGINEER FOR NEW DESIGN.
 - CONNECTION FOR ROOF FRAMING OF NEW STAIR TOWER ON NORTH SIDE OF LEO'S RESTAURANT (29 SOUTH FREDERICK) TO RE-USE EXISTING POCKETS/LEDGER. IF EXISTING ELEMENTS ARE IN POOR CONDITION/NOT RE-USABLE ONCE EXPOSED, CONTACT ENGINEER FOR NEW DESIGN.
 - EXISTING DAMAGE HAS BEEN NOTED TO THE PARAPET ON THE WEST SIDE OF LEO'S RESTAURANT (29 SOUTH FREDERICK). CONTRACTOR RESPONSIBLE FOR DOCUMENTING EXISTING CONDITION PRIOR TO DEMOLITION WORK TO MONITOR FOR ANY CHANGES IN CONDITION DUE TO DEMOLITION WORK.



2 NORTH WALL INFILL SECTION
Scale: 1/2" = 1'-0"



3 WEST WALL INFILL SECTION
Scale: 1/2" = 1'-0"

I hereby certify that this engineering document was prepared and the related engineering work was performed by me or under my direct personal supervision and that I am a duly licensed Professional Engineer under the laws of the State of Iowa.

JAMES C. JACOB, P.E. DATE: 02-25-25
License number 8895
My license renewal date is December 31, 2025
Pages or sheets covered by this seal: S1, S2

LICENSED PROFESSIONAL ENGINEER
Licensed 8895
James C. Jacob
IOWA

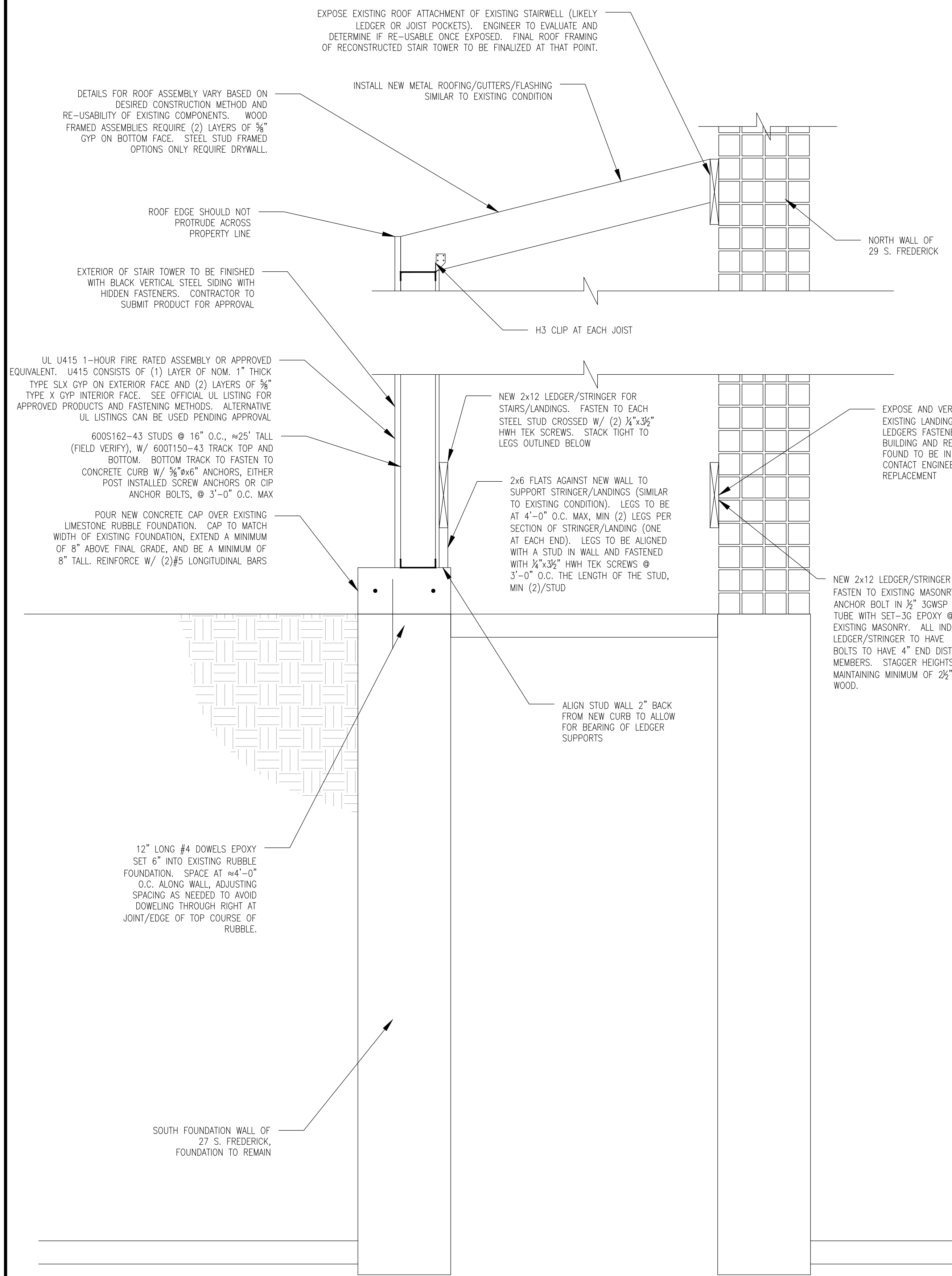
27 SOUTH FREDERICK AVE
OELWEIN, IOWA
DEMOLITION PROJECT
DEMOLITION PLAN AND BASEMENT DETAILS

NO.	REVISIONS
1	
2	
3	
4	

scale AS NOTED
drawn by JFK
approved by JCJ
date 01-27-25
sheet

S1
24-3207

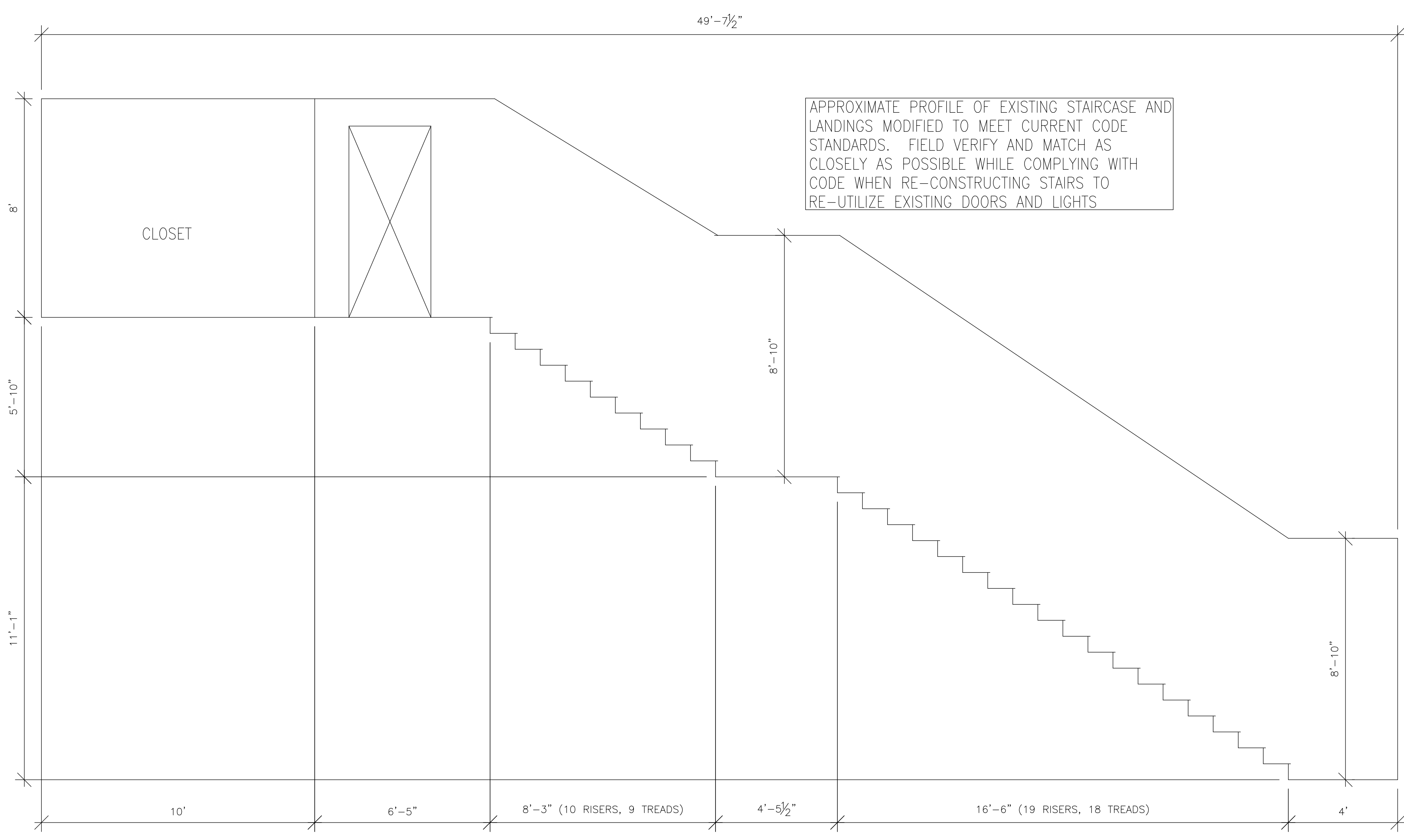
VJ Engineering
2570 Holiday Road
Coralville, Iowa - 319-338-4939



1 SOUTH STAIR TOWER SECTION
Scale: 1" = 1'-0"

NOTE: NEW STAIRS SHALL COMPLY WITH STANDARD BUILDING CODE REQUIREMENTS INCLUDING 7:11 RISE:RUN AND RAILING ON BOTH SIDES.

NOTE: WHERE EXTERIOR STEEL STUD WALLS RETURN AND END AGAINST WALL OF 29 S. FREDERICK PLACE LAST STUD BACK FLUSH TO EXISTING MASONRY AND FASTEN TO MASONRY WITH 1/2" x 6" LONG ANCHOR BOLT IN 1/2" 3GWSP OPTI-MESH SCREEN TUBE WITH SET-3G EPOXY @ 3'-0" O.C. VERTICALLY.



2 STAIR PROFILE
Scale: 3/8" = 1'-0"

REVISIONS	
1	
2	
3	
4	
scale	AS NOTED
drawn by	JFK
approved by	JCJ
date	01-27-25
sheet	

**27 SOUTH FREDERICK, OELWEIN, IA
DEMOLITION PROJECT**

**FOR THE
CITY OF OELWEIN, IA**

DETAILED SPECIFICATIONS

PREPARED BY

VJ ENGINEERING
2570 HOLIDAY RD., SUITE 10
CORALVILLE, IA 52241
PHONE (319) 338-4939
FAX (319) 338-9457

MARCH 5, 2025

**27 SOUTH FREDERICK, OELWEIN, IA
DEMOLITION PROJECT**

**FOR THE
CITY OF OELWEIN, IA**

PREPARED BY: VJ Engineering
2570 Holiday Rd., Suite 10
Coralville, IA 52241

OPENING OF BIDS: April 10, 2025 @ 1:30 p.m.
Oelwein City Hall Council Chambers

I hereby certify that this engineering document was prepared by me or under my direct personal supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Iowa.

James C. Jacob, P.E. Reg. #8895
My license renewal date is December 31, 2025

Date

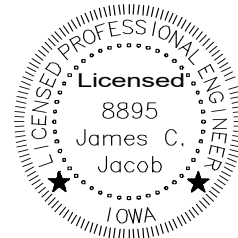


TABLE OF CONTENTS

BIDDING AND CONTRACT DOCUMENTS

NOTICE OF HEARING AND LETTING
INSTRUCTIONS TO BIDDERS
FORM OF PROPOSAL
FORM OF CONTRACT
PERFORMANCE BOND
PAYMENT BOND
NOTICE OF AWARD
NOTICE TO PROCEED
CHANGE ORDER
SPECIAL CONDITIONS
STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TECHNICAL SPECIFICATIONS

01010	General Requirements and Information
01040	Measurement and Payment
01290	Payment Procedures
02000	Site Work
02080	Asbestos Abatement
02221	Building Demolition

NOTICE OF HEARING AND LETTING

NOTICE OF PUBLIC HEARING ON PROPOSED DRAWINGS, PLANS AND SPECIFICATIONS, FORM OF CONTRACT AND UNIT COSTS FOR THE FOLLOWING PROJECT

27 SOUTH FREDERICK DEMOLITION PROJECT OELWEIN, IA

AND THE TAKING OF BIDS FOR SUCH CONSTRUCTION.

Notice is hereby given that on **March 25, 2025**, there will be on file with the City Clerk of the City of Oelwein, Iowa, proposed Drawings, Plans and Specifications, Form of Contract and unit costs for the **27 South Frederick Demolition Project, (the “Project”)** hereinafter described.

A hearing will be conducted on said Drawings, Plans and Specifications, Form of Contract and unit costs before the Oelwein City Council at 6:00 P.M. on April 14th, 2025, in the City Council Chambers, at which time and place any person may appear and file objections to the proposed Drawings, Plans and Specifications, Form of Contract and Cost Estimate for the Project.

Sealed Bids for the Project will be received by the City Clerk at the City Hall, Oelwein, Iowa, until 1:30 P.M. April 10, 2025 and will be opened and publicly read aloud by said Clerk immediately thereafter. The City Council will consider all bids received at the April 14, 2025 City Council meeting.

The Project is generally described as follows:

Demolition, disposal, site restoration, and construction of exterior staircase for adjacent building.

The Project shall be performed in accordance with the Drawings, Plans and Specifications and Contract Documents on file with the Oelwein City Clerk which are by this reference made a part of this notice as though fully set out and incorporated herein.

The Project shall not begin prior to **August 4, 2025, at 8:00 a.m.** and shall be substantially complete on or before **October 1, 2025**.

A tax-exempt certificate will be issued to the successful bidder by the City of Oelwein for all supplies to be used on the Project.

Contractor shall be paid monthly as work progresses in amounts equal to ninety-five percent (95%) of the contract value of the work completed during the preceding calendar month, including the actual cost (exclusive of overhead or profit to the Contractor) of materials and equipment of a permanent nature to be incorporated in the work and delivered to and stored at the job site. Such monthly payments shall in no way be construed as an act of acceptance for any part of the work, partially or totally completed. Final payment of the remaining amount due Contractor will be made not earlier than thirty-one (31) days from the final acceptance of the work by the City, subject to the conditions and in accordance with the provisions of Chapter 573 of the Code of Iowa.

The successful bidder will be required to furnish a corporate surety bond in an amount equal to one hundred percent (100%) of the contract price. Said bond shall be issued by a responsible surety approved by the City Council and shall guarantee the faithful performance of the Contract and the terms and conditions therein contained and the maintenance of the Project in good repair for not less than two (2) years from the acceptance of Project completion by the City Council.

The City reserves the right to defer award of Contract for a period not to exceed thirty (30) calendar days after the date bids are received, to reject any or all proposals, and to waive technicalities or irregularities in the Bids received if determined to be in the best interests of the City to do so.

Davis-Bacon prevailing wage rates are **not** applicable to the Project.

Drawings and Specifications governing the Project have been prepared by VJ Engineering, which Drawings and Specifications and the proceedings of the City Council referring to and defining the Project are by this reference made a part hereof and also a part of the Contract, and the Contract shall be executed in compliance therewith.

Bids shall be submitted on the "Form of Proposal" prepared for this purpose. Plans, Specifications and proposal forms will be available for viewing in the office of the Oelwein City Clerk or VJ Engineering, 2570 Holiday Rd Ste 10, Coralville, Iowa 319-338-4939.

Copies will be available at VJ Engineering, 2570 Holiday Rd Ste. 10, Coralville, IA 52241. Phone: 319-338-4939 Fax 319-338-9457 Electronic (pdf) copies of the documents will be available from frontdesk@vjengineering.com provided that the request includes a valid mailing address and company contact information.

City of Oelwein, Iowa

by _____
Oelwein City Clerk

INSTRUCTIONS TO BIDDERS

1. RECEIPT AND OPENING OF PROPOSALS:

- A. The City of Oelwein, Iowa hereinafter called "Owner" or "City", will receive sealed bids at the office of the City Clerk, City Hall, Oelwein, Iowa, until **1:30 p.m.** local time on **April 10, 2025**. Properly received bids will be opened and read aloud on that date immediately after **1:30 p.m.**, local time at the City Hall, Oelwein, Iowa.
- B. Any proposal received after the time specified for the receipt of proposals will not be considered and will be returned unopened.

2. PREPARATION OF PROPOSAL:

- A. Proposals shall be prepared on an exact copy of the "Form of Proposal" included within these specifications. All applicable blank spaces shall be filled in, typewritten or in ink. Total bid amounts shall be in both words and figures. If in conflict, the amount written in words shall govern.
- B. Proposals shall indicate the full name of bidder, shall be signed in the firm or corporate name of the bidder and shall bear the longhand signature of a principal duly authorized to execute contracts for the bidder. The name of each person signing the proposal shall be typed or printed below the signature.
- C. All erasures or corrections shall be initialed by the person signing the proposal.

3. DEMOLITION OBSERVATION

- A. The City will provide observation for the demolition project deemed necessary and appropriate by the City, in its' sole discretion. If Contractor fails to complete the Project by the Project deadline, any additional observation costs incurred by the City will be assessed to Contractor.

4. METHOD OF BIDDING:

- A. Bidders shall submit a lump sum price as required for the work covered by the plans and specifications. The lump sum price shall cover complete work and include all costs incidental thereto, unless otherwise indicated.
- B. Because this is a lump sum project, Contractor will be paid that amount for the completed work. Payment for all work shall be made in accordance with **SPECIAL CONDITIONS, SC-NO. 9.**
- C. Items shown on the Plans and Specifications, if any, as "By Others" shall not be a part of this Contract.

5. SUBMITTAL OF BIDS:

- A. Bids shall be submitted on the "Form of Proposal" for this Project. The Form of Proposal shall be submitted in a sealed envelope separate from the bid security, which shall be submitted in a separate sealed envelope, both the Form of Proposal and the Bid Security, in their separate envelopes, may be submitted to the City in one larger envelope. The envelope shall bear the return address of the bidder and shall be addressed as follows:

TO: City Clerk

INSTRUCTIONS TO BIDDERS

City Hall
City of Oelwein
Oelwein, Iowa 50662

BID FOR: 27 South Frederick Demolition Project

- B. The bid shall be signed by a legally authorized representative of the bidder.
 - C. DO NOT submit a copy of the plans and specifications with the Form of Proposal.
6. **MODIFICATIONS OF PROPOSAL:**
No modifications of a submitted Form of Proposal will be permitted.
7. **WITHDRAWAL OF PROPOSAL:**
Bids may be withdrawn any time prior to the scheduled closing time for receipt of proposals, April 10, 2025 at 1:30 p.m. Bids may not be withdrawn for a period of thirty (30) calendar days thereafter.
8. **BIDDER'S KNOWLEDGE:**
The Project is located in the City of Oelwein, Iowa as shown on the drawings, and Plans and Specifications. Bidders are obligated to familiarize themselves with the drawings, plans and specifications, and conditions which will affect the Project. Bidders are solely responsible for the examination of all Contract Documents as well as the Project site and physical conditions associated with the Project that may affect the submitted bid and performance under the contract.
9. **BIDDER'S QUALIFICATIONS:**
 - A. The City Council will only award the Project to a bidder determined to be responsible. To that end, a bidder may be required to satisfy the City Council as to the bidder's qualifications, including proof of integrity, experience, equipment, personnel and financial ability to perform the Project as specified.
 - B. If the successful bidder is an entity existing under the laws of a State other than Iowa, the bidder shall submit proof to the City, prior to the execution of the Contract, of authorization by the Secretary of State to do business in the State of Iowa.
 - C. The City may make such investigations as deemed necessary to determine the ability of the bidder to perform the Work, and the bidder shall furnish to the City all such information and data for these purposes as the City may request. The City reserves the right to reject any bid, from the evidence submitted, or investigation thereof, if such bidder fails to satisfy the City that such bidder is properly qualified to carry out the obligations of the Contract and to complete the Project as designed.
 - D. The City reserves the right to reject any or all proposals and to waive technicalities and irregularities and to accept the proposal from the lowest responsive, responsible bidder.
10. **DRAWINGS AND SPECIFICATIONS:**
 - A. Work is to be performed in strict compliance with the drawings, plans and

INSTRUCTIONS TO BIDDERS

specifications prepared by VJ Engineering, Coralville, Iowa.

B. The drawings, plans and specifications and proposed Contract Documents may be examined at the office of the City Clerk in Oelwein, Iowa. Copies will also be available at VJ Engineering, 2570 Holiday Rd Ste. 10, Coralville, IA 52241. Phone: 319-338-4939 Fax 319-338-9457. Electronic (pdf) copies of the documents will be available from frontdesk@vjengineering.com provided that the request includes a valid mailing address and company contact information.

C. No Fee will be required for Plans and Specifications.

Send to: ATTENTION: 27 South Frederick Demolition Project
VJ Engineering
2570 Holiday Rd, Ste 10
Coralville, Iowa 52241

11. **BIDDER'S REPRESENTATION:**

A. Each bidder by submitting a proposal, represents that bidder has:

- 1) Read and completely understands the Contract Documents.
- 2) Examined the Project site and is totally familiar with the conditions under which the work is to be performed including availability and cost of labor and materials. Bidder may arrange for a site visit in advance by contacting VJ Engineering, 2570 Holiday Road, Suite 10, Coralville, IA 52241. Telephone: (319) 338-4939.
- 3) Based the bid upon the plans and specifications and obligations as described in the Contract Documents.
Bidders must satisfy themselves of the accuracy of the plans and specifications and obligations as described in the Contract Documents by examination of, and review of the drawings and specifications including addendums. After bids have been submitted, the bidder shall not assert that there was a misunderstanding concerning the work to be performed.
- 4) Agreed that failure of the selected bidder to fulfill the representations of this Article shall in no way relieve the obligation of the bidder to furnish all material and labor necessary to complete the Project and to carry out the provisions of the Contract, nor shall such failure constitute grounds for extra compensation over the price stated in the accepted proposal, absent change order(s) approved by the City.
- 6) Agreed that work on the Project will not begin prior to **August 4, 2025, at 8:00 a.m.** and be substantially completed on or before **October 1, 2025.**
- 7) Agreed that the sum of \$400 per calendar day as liquidated damages for failure to meet the substantial completion date listed above is representative of actual per diem damages to be incurred by the City.

12. **SUBCONTRACTORS:**

- A. The bidder is specifically advised that any person, firm or other party to whom it is proposed to award a subcontract under this contract must be acceptable to the Owner.
- B. The bidder shall name persons, firms or other parties to whom it intends to award a subcontract, under this Contract. Such identification will not be made public at

INSTRUCTIONS TO BIDDERS

the bid opening, but must be made in advance of Contract execution.

13. **SUBSTITUTIONS:**

- A. No substitution for any materials and/or equipment described in the Contract Documents will be considered during the bidding period unless written request has been submitted to the Engineer for approval at least 10 days prior to the time set for receipt of bids. Each such request shall include a complete description of the proposed substitution, the name of the material or equipment for which it is to be substituted, drawings, cuts, performance, data, test data or information necessary for a complete evaluation.

14. **INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS:**

- A. Bidders shall promptly notify the Engineer of ambiguities, or errors which they may discover upon examination of the Bidding Documents or of the site or local conditions.
- B. Bidders requiring clarification or interpretation of the Bidding Documents shall submit a written request which shall reach the Engineer at least seven (7) calendar days prior to the date for receipt of Bids.
- C. Any interpretation, correction or change of the Bidding Documents will be made by Addendum. Interpretations, corrections or changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon such interpretations, corrections or changes.
- D. If conflicts are found between the Drawings and Plans and Specifications in the Post Bid construction period then the most stringent shall take precedence. Questions concerning the interpretation or intent of the Contract Documents should be directed to:

James C. Jacob, P.E.
VJ Engineering
2570 Holiday Road, Suite 10
Coralville, IA 52241
319-338-4939

Any oral interpretation provided to Bidder will only be valid and enforceable upon same being reduced to a written addendum and delivered to Bidder. Information obtained from an officer, agent, or employee of the City shall not affect the risks or obligations assumed by the Contractor or relieve Contractor from fulfilling all conditions of the Contract.

The City reserves the right to revise or amend the Contract Documents, prior to the date set for receipt of bids. Such revisions and amendments, if any, will be announced by an addendum to the Contract Documents. No such addendum will be issued later than five (5) days prior to the date set for receiving bids.

Copies of such addendums as may be issued will be furnished to holders of Contract Documents.

Bidders are required to acknowledge receipt of addendums by listing such addendums in the "Form of Proposal".

15. **METHOD OF AWARD:**

- A. Owner may reject any or all bids, waive irregularities or technicalities in any bid, and award the contract to the lowest responsive, responsible bidder.

INSTRUCTIONS TO BIDDERS

- B. Contract shall be considered awarded when the selected bidder receives **NOTICE OF AWARD**, from the Owner.

16. EXECUTION OF THE CONTRACT:

- A. Selected bidder shall execute four (4) copies of the Agreement and return same to the Engineer within ten (10) calendar days from the date of receipt of the written Notice of Award to Bidder. Said notification shall be accompanied by the necessary Contract and Bond forms. The Contract will not be executed until four (4) copies of the following have been received and approved by the Owner: **Form of Contract**, Performance, Bond, Payment Bond, & Maintenance Bond in an amount equal to one hundred percent (100%) of the contract price, said bonds to be issued by a responsible surety approved by the Owner. In case of failure of the bidder to execute the Contract, the City may in its' discretion consider the bidder in default, in which case the bid bond accompanying the proposal shall become the property of the City.
- C. The surety on all bonds required by these documents shall be a surety company duly authorized to do business in the State of Iowa, and said bonds shall be countersigned by an Iowa Resident Agent. Attorneys-in-Fact who sign surety bonds must file with each bond a certified and effectively dated copy of their power of attorney. Four (4) copies are required.
- D. The City, within twenty-one (21) calendar days of receipt of acceptable Contract and Performance Bond, Payment Bond and Maintenance Bond, signed by the successful bidder shall sign the Contract and return to such party an executed copy of same. Should the City not execute the Contract within such period, the bidder may by written notice withdraw the signed agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the City.
- E. The Notice to Proceed shall be issued within five (5) calendar days of the execution of the Contract by the City. Should there be reasons why Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the City and Contractor. If Notice to Proceed has not been given within the five (5) calendar day period or within the period mutually agreed upon, the Contractor may terminate the Contract without further liability on the part of either party.
- F. The Contract, when executed, shall be deemed to include the entire agreement between the parties; the Contractor shall not claim any modification resulting from representation or promise made by representatives of the City or other persons.

17. GUARANTEE:

- A. Contractor shall guarantee the prompt payment of all materials and labor and defend, protect and save harmless the City and Engineer from claims and damages of any kind caused by the operation of the Contract.
- B. Contractor shall guarantee the maintenance of all work for a period of two (2) years from and after its completion and acceptance by the Owner. This shall be construed to mean free from any functional or structural deterioration, including settling of the site that exceeds settling determined to be normal and customary for such a project, except that caused from ordinarily reasonable use and acts of God.
- C. If, in the opinion of the Engineer, such deterioration, including settling of the site,

INSTRUCTIONS TO BIDDERS

takes place, the Engineer shall so notify the Contractor in writing to the address given in the Contractor's proposal and send a copy of such notice to the bonding company, which notice is mutually agreed to be sufficient and adequate. If the Contractor shall not proceed to remedy such defects as described in the notice within thirty (30) calendar days, the Engineer and the City shall cause repairs to be made as deemed necessary with the entire cost thereof to be assessed to and thereafter paid by the Contractor or sureties.

18. INSURANCE:

Selected bidder shall obtain and maintain insurance as required by **SPECIAL CONDITIONS and GENERAL CONDITIONS** and shall submit to Engineer four (4) copies of the Certificate of Insurance. The Contract shall not be executed until all insurance requirements are met.

19. PRE-CONSTRUCTION MEETING:

A pre-construction meeting for the project is scheduled for April 15th, 2025, at 9:00 a.m. at Oelwein City Hall Council Chambers.

END OF INSTRUCTIONS TO BIDDERS

FORM OF PROPOSAL

City of Oelwein
27 SOUTH FREDERICK DEMOLITION PROJECT

NOTE TO BIDDERS: Please do not use the Form of Proposal bound within the Plans and Specifications; use the separate stand alone "Form of Proposal" furnished to the bidders with Project documents.

BID DATE: April 10, 2025, @ 1:30 p.m.

NAME OF BIDDER: _____

ADDRESS OF BIDDER: _____

TO: City Clerk
City of Oelwein
Oelwein, Iowa 50662

ASSURANCES:

- A. The undersigned bidder submits herewith bid security in the amount of \$ _____ in accordance with the terms set forth in the instructions to Bidders.
- B. The undersigned bidder, having examined the Drawings, Plans and Specifications, Instructions to Bidders, the location and site of proposed work, the nature of the work to be done, extent and conditions of existing utilities affecting, or affected by the proposed work, and being fully advised as to the extent and character of the work and all existing local conditions, relative to Project difficulties, hazards, labor transportation, hauling, trucking and other factors affected by or affecting the work covered by this proposal as outlined in the Plans and Specifications and drawings, including the following Addendums, numbered _____, HEREBY PROPOSES to furnish all materials, tools, appliances, and equipment; and to perform all necessary labor required to complete the "27 SOUTH FREDERICK DEMOLITION PROJECT, OELWEIN, IOWA" for the City of Oelwein, Iowa and all items incidental thereto and to perform work in accordance with the drawings and plans and specifications for said project, including all items of expense and profit.
- C. Bidder further agrees:
 - 1. To do all extra work which may be required to complete the Project, as herein stated.
 - 2. To execute the Form of Contract within ten (10) calendar days following receipt of written Notice of Award.
 - 3. To submit before Contract approval, the list of proposed subcontractors (if any) and required Certificates of Insurance.
 - 4. To begin the project no sooner than **August 4, 2025, at 8:00 a.m.** and substantially complete the project on or before **October 1, 2025.**
- D. The undersigned bidder certifies that its bid has been submitted in good faith, without collusion or connection with any other person or entity submitting a bid for the Project.
- E. The undersigned bidder hereby affirms that its' bid is made in conformity with the

FORM OF PROPOSAL

Contract Documents and agrees that, in the event of any discrepancies or differences between any conditions of the bid and the Contract Documents prepared by VJ Engineering the provisions of the Contract Documents shall prevail.

- F. The undersigned bidder further states that the bid is a Lump Sum bid, not a bid based upon unit pricing or estimated quantities, and that no adjustment to the bid will be made based upon the reconciliation of quantities upon Project completion.
- G. **The undersigned bidder further acknowledges that a tax-exempt certificate will be issued for all supplies to be used for this project.**

COMPANY: _____

BY: _____

(TITLE)

(BUSINESS ADDRESS)

PARTNERSHIPS: FURNISH FULL NAME OF ALL PARTNERS

27 SOUTH FREDERICK DEMOLITION PROJECT

FORM OF PROPOSAL

BASE BID:

Having fully examined the Drawings, Plans and Specifications, and having inspected the Project site, in full consideration of the nature of the work required, and all matters referred in the Instructions to Bidders and the Contract Documents prepared by VJ Engineering for the above-mentioned project, the undersigned do hereby offer to enter into a Contract with the City of Oelwein to complete the Project for the Lump Sum of:

_____ dollars

(\$ _____).

FORM OF CONTRACT

27 SOUTH FREDERICK DEMOLITION PROJECT

THIS AGREEMENT, made and entered into this _____ day of _____, 2025, (“Effective Date”) by and between the City of Oelwein, Iowa, (“Owner”) and _____, (“Contractor”), Owner and Contractor jointly referred to as the “Parties”.

WITNESSETH

WHEREAS Owner has heretofore caused to be prepared certain drawings, plans and specifications, form of contract and cost estimate for the 27 South Frederick Demolition Project, Oelwein, Iowa under the terms and conditions set forth fully therein, and whereas, said drawings, plans and specifications, form of contract and cost estimate accurately and fully describe the terms and conditions upon which the Contractor has submitted a bid and is prepared to perform.:

NOW THEREFORE, IN CONSIDERATION OF THE FOLLOWING TERMS AND PROVISIONS, THE PARTIES AGREE AS FOLLOWS:

1. Owner hereby accepts the bid received from Contractor and awards the Project to Contractor and Contractor agrees to perform the tasks necessary to complete the Project in return for the “Contract Amount” set forth below:

CONTRACT AMOUNT \$ _____

2. The Parties agree that the following documents are, by this reference, incorporated as part of this Contract in full as if same had been set forth fully verbatim herein:
 - a. Addendum Numbers _____, _____ and
 - b. Form of Proposal (signed copy)
 - c. General Conditions
 - d. Special Conditions
 - e. Plans and Specifications
 - f. Drawings

The components listed above are complimentary and what is called for by one shall be as binding as if called for by all. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the most stringent provision shall govern.

3. Payments shall be made to Contractor in accordance with and subject to the provisions embodied in this Contract and the documents incorporated herein, by reference above.
4. This Contract shall be executed in four (4) original copies.
5. The Project will begin no sooner than **August 4, 2025, at 8:00 a.m.** and will be complete on or before **October 1, 2025.**

FORM OF CONTRACT

- 6. Liquidated damages in the amount of \$400 per calendar day will be assessed for failure to meet either of the above deadlines, and Contractor agrees that liquidated damages in said amount are representative of the actual damages to be suffered by Owner if said deadlines are not complied with.

- 7. Owner agrees to provide **Contractor with tax-exempt certificates, as requested, for all supplies and/or other purchases eligible for tax exemption to be used during the performance of Project.**

IN WITNESS WHEREOF, the Parties hereby execute this Contract on the effective date hereof.

CITY OF OELWEIN, IOWA

CONTRACTOR

_____, Mayor

_____, _____

ATTEST:

_____, _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS That we,

(insert name and address or legal title of the Contractor) a Principal, hereinafter called the Contractor and

(insert legal title of Surety) as Surety, hereinafter called the Surety, are held and firmly bound unto the City of Oelwein, Iowa, as Oblige, hereinafter called the Owner, in the penal sum

of _____

(\$ _____)

lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Contractor, Principal herein, has entered into a Contract with the Owner for the following Project:

The City of Oelwein, Iowa 27 South Frederick Demolition Project

in accordance with drawings, plans and specifications, addendums, and other documents incorporated by reference in the Contract, all prepared by VJ Engineering. which contract is by reference made a part hereof, and is hereafter referred to as the "Contract".

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION is such that, if the Contractor shall promptly and faithfully perform work contracted to be performed and comply with all provisions of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect. The total amount of the Surety's liability under this bond shall in no event exceed the penal sum hereof.

No right of action or recovery shall accrue hereunder to or for the use of any person or entity other than the Owner named herein, its heirs, executors, administrators or successors.

Provided, however, as to the Owner, the right of recovery shall be upon the following expressed conditions, the performance of which shall be a condition precedent;

First: In the event of any default on the part of the Principal, written notice thereof shall be delivered to the Surety as promptly as possible, and in any event within ten (10) days after the Owner shall become aware of such default, and upon Owner becoming aware of such defaults, no further payments shall be made under the said Contract without the written consent of Surety.

PERFORMANCE BOND

If the Principal shall abandon said Contract or be compelled by the Owner to cease operations thereunder, then Surety shall have the option to proceed or procure others to proceed with the performance of the Principal's Contract obligations, and all reserves, deferred payments, and other monies provided by said Contract to be paid to the Principal shall be paid to the Surety, at the same time and under the same conditions as by the terms of said Contract such monies would have been paid to the Principal had the Contract been performed by the Principal. The Surety shall be entitled to all such payments and monies in preference to any assignee of the Principal or any adverse claimant, unless Owner shall be entitled to all such payments and monies in preference to any assignee of the Principal or any adverse claimant; but if the Owner shall complete or re-let the Contract, all reserves, deferred payments or other monies remaining after payment for such completion shall be paid to the Surety or applied as the Surety may direct toward the settlement of any obligation or liability incurred hereunder.

Second: Owner shall faithfully perform all of the terms, covenants and conditions of said Contract on the part of the Owner contracted to be performed. In no event shall payment or payments to Contractor from Owner be in an amount greater than ninety five percent (95%) of the value of the work performed by Contractor to the date of such payment. Owner shall retain the remaining five percent (5%) of all payments and all reserves or deferred payments for a period of thirty (30) days after completion and acceptance of the total project by the Owner, or a period to correspond to the applicable lien period in which notices of claims or claims of lien by persons performing work or furnishing materials may be filed, or until all such claims have been paid unless the Surety shall consent in writing to the payment of said final payment, reserve or deferred payments.

Third: Surety shall not be liable for any damages resulting from strikes, labor difficulties, or from mobs, riots, civil commotion, public enemy, fire, the elements, shifting of elements, acts of God or defects or faults in the plans or specifications referred to in said Contract or for repairs or reconstruction of any work or materials damaged or destroyed by any of said causes; or for damages arising out of injuries to persons or property or for the death of any person or person, or by virtue of any statutory provision for damages or compensation for injury to or the death of any employee; or for the infringement or validity of any patent; or for the efficiency or wearing qualities of any work done or materials furnished or the maintenance thereof or repairs thereto; or for the furnishing of any bond or obligation other than this instrument.

Fourth: No suit, action or proceeding by the Owner to recover on this bond shall be sustained unless the same be commenced within twenty-five (25) months from the date upon which Owner gave Surety written notice of default as provided herein.

Fifth: Surety is obligated only to the dollar amount shown on the face of this bond. If any additions or alterations of the original Contract upon which this bond was issued occur, increasing or altering the contract price, the surety is obligated only to the proportional amount that the original Contract bears to the altered contract price, unless expressly waived by the Surety in writing.

PERFORMANCE BOND

Signed, sealed and dated This _____ Day of _____ 2025 A.D.

Principal

Title

Witness

Surety

Title

Witness

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____, Principal and
(insert name of Contractor)

_____, Surety, are firmly
(insert name of Surety)

held and firmly bound unto the City of Oelwein, Iowa, Obligee, in the sum of

_____.

(\$ _____)

for the payment of which we bind ourselves, our legal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a contract with Obligee, dated _____ for the **27 South Frederick Demolition Project**, City of Oelwein, Iowa, copy of which contract is by reference made a part hereof.

NOW, THEREFORE, if Principal shall promptly make payment to all persons supplying labor and materials incorporated in the prosecution of the work provided for in said contract, then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED HOWEVER, that the Obligee having required the said Principal to furnish this bond in accordance with contractual terms and provisions (“Contract”) and applicable statutes, all rights and remedies shall inure solely to the statutory beneficiaries in accordance with the provisions, conditions, and limitations of the Contract and applicable statutes to the same extent as if they were set forth fully verbatim herein.

Signed and dated this _____ day of _____, 2025.

By: _____
Contractor

By: _____
Surety

NOTICE OF AWARD

To: _____

Project Description: **27 SOUTH FREDERICK DEMOLITON PROJECT**

The OWNER has considered the BID submitted by you/your company for the above described Prooject in response to their Public Hearing and Letting.

You are hereby notified that your BID has been accepted in the amount of (\$_____)
_____.

You are required by the Specifications and Contract Documents to execute the Form of Contract and furnish the required CONTRACTOR'S Performance Bond, Payment Bond, Maintenance Bond and certificates of insurance within ten (10) calendar days from the date of receipt of this Notice.

If you fail to execute said Form of Contract and to furnish said BONDS within ten (10) days from the date of this Notice, said OWNER will be entitled to consider your rights arising out of the OWNER'S acceptance of your BID as abandoned, and OWNER will be entitled to such rights and remedies as may be provided or available under applicable law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this _____ day of _____, 2025.

Owner: _____ By: _____
City of Oelwein City Engineer

ACCEPTANCE OF AWARD

Receipt of the above NOTICE OF AWARD is hereby acknowledged

by: _____

this the _____ day of _____, 2025.

By _____

Title: _____

NOTICE TO PROCEED

Project: **27 SOUTH FREDERICK DEMOLITION PROJECT**

To: _____

Date: _____

You are hereby notified to proceed with work under the Contract dated _____, subject to the start date of no sooner than August 4, 2025, at 8:00 a.m. with a substantial completion date of on or before October 1, 2025.

Owner: City of Oelwein, Iowa

By _____
_____ Mayor

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by

_____.

this _____ day of _____, 2025.

By _____

Title _____

CHANGE ORDER

Order No. _____

Date: _____

Agreement Date: _____

NAME OF PROJECT: 27 South Frederick Demolition Project

OWNER: City Of Oelwein

CONTRACTOR: _____

The following changes are hereby made to the CONTRACT DOCUMENTS:

Change to CONTRACT PRICE:

Original CONTRACT PRICE: \$ _____

Current CONTRACT PRICE adjusted by previous

CHANGE ORDER \$ _____

The CONTRACT PRICE due to this

CHANGE ORDER will be increased by \$ _____

The new CONTRACT PRICE including this

CHANGE ORDER will be \$ _____

Change to CONTRACT TIME:

The CONTRACT TIME will be increased by _____ calendar days.

The date for completion of all work will be _____.

APPROVALS REQUIRED:

To be effective this Order must be approved by the OWNER.

OWNER: _____

CONTRACTOR: _____

ENGINEER: _____

SPECIAL CONDITIONS

TABLE OF CONTENTS

NO. DESCRIPTION

1. GENERAL
2. SCOPE
3. FORM OF SPECIFICATIONS
4. BOND TO ACCOMPANY PROPOSAL
5. SUBMITTAL OF CONTRACT DOCUMENTS
6. SUBMITTALS TO ENGINEER
7. INSURANCE REQUIREMENT
8. PROJECT MEETINGS
9. MEASUREMENT AND PAYMENT
10. LIQUIDATED DAMAGES
11. ENGINEER'S RESPONSIBILITY AND AUTHORITY
12. CONTRACTOR'S EMPLOYEES
13. SAFETY
14. QUALITY REQUIREMENTS
15. COORDINATION OF CONSTRUCTION
16. CONSTRUCTION BOUNDARIES
17. MAINTENANCE AND CONTROL OF ACCESS AND TRAFFIC
18. SURVEYS AND STAKING
19. FIELD TESTS
20. PREFERENCE FOR LABOR AND MATERIALS
21. RESOURCE RECOVERY- FLY ASH
22. WORK DURING AN EMERGENCY
23. MINOR WORK
24. CONSTRUCTION FACILITIES
25. UTILITIES ADJUSTMENT
26. EXCAVATION
27. SHEETING, SHORING AND BRACING
28. SURFACE RESTORATION
29. CONSTRUCTION RECORD DOCUMENTS
30. WASTE SITES
31. CLEANUP
32. CODE OF FAIR PRACTICE
33. DISCOVERY OF HISTORICAL AND ARCHAEOLOGICAL DEPOSITS

SPECIAL CONDITIONS

1. GENERAL:

The following paragraphs are included to modify and/or supplement the General Conditions and Technical Specifications.

2. SCOPE:

The scope of the project is as described on and in the Drawings and Plans and Specifications for the **27 South Frederick Demolition Project**, City of Oelwein, Iowa.

3. FORM OF SPECIFICATIONS:

A. Omissions of words or phrases such as "the Contractor shall", "in conformance with", "shall be", "as noted on the drawings", "according to the drawing", "a", "an", "the", and "all" are intentional.

B. Definitions:

- 1) OWNER: City of Oelwein, Iowa.
- 2) ENGINEER: VJ Engineering, Coralville, Iowa, or their authorized representative.
- 3) WORK OR PROJECT: Work to be done and equipment, supplies, and materials to be furnished under the Contract unless some other meaning is indicated by the context.
- 4) WORKING DAY: A working day shall be any day, other than a legal holiday, Saturday or Sunday, on which the normal working forces of the Contractor may proceed with the regular work for at least six hours between 8:00 a.m. and 4:30 p.m., Local Time, toward completion of the Contract unless work is suspended for causes beyond the Contractor's control. Saturdays, Sundays and holidays on which the Contractor's forces engage in regular work, requiring the presence of an inspector, will be considered as working days.

The reader is referred to GENERAL CONDITIONS, ARTICLE 1, for definitions of other terms.

4. SUBMITTAL OF CONTRACT DOCUMENTS:

Following is a list of Contract Documents to be submitted to the Engineer by the Contractor upon award of the Contract:

- a. Executed Contract (Agreement).
- b. Performance Bond, Payment Bond and Maintenance Bond.
- c. Certificate of Insurance.

Four (4) signed copies of each must be submitted within ten (10) calendar days of receipt of notification of acceptance of proposal.

SPECIAL CONDITIONS

5. SUBMITTALS TO ENGINEER:
- A. No work shall begin until the following documents have been received, reviewed and approved by the Engineer:
- 1) List of Proposed Subcontractors (if any) and their addresses. Attention is directed to GENERAL CONDITIONS, Items 6.8-6.11 and to INSTRUCTIONS TO BIDDERS, Item 13.
 - 2) Required Insurance Certificates. For further detail, refer to SPECIAL CONDITIONS, Item 7 and GENERAL CONDITIONS, Item 5.3.
 - 3) List of Contractor's and Subcontractor's advisory personnel who will be on the project along with telephone numbers where they may be reached.
- B. Other submittals required by the specifications are as follows:
- 1) Maintenance guarantee on all work for a period of two (2) years following acceptance of work by Owner. Refer to INSTRUCTIONS TO BIDDERS, Item 18.
 - 2) Release of liens as required by GENERAL CONDITIONS, Item 14.3.
 - 3) Shop drawings for segmented block retaining wall as shown on the plans, signed and sealed by an Iowa licensed professional engineer.
6. INSURANCE REQUIREMENTS:
- A. The Contractor shall purchase policy(s) and maintain throughout the construction period, insurance in the following minimum requirements:
- 1) Workmen's Compensation and occupational disease insurance covering all employees in statutory limits who perform any obligations assumed under the Contract.
 - 2) Public liability and property damage liability insurance covering all operations under the Contract; limits for bodily injury or death not less than \$300,000 for one person and \$500,000 for each accident; for property damage, not less than \$100,000 for each accident and \$300,000 aggregate for accidents during the policy period. Contractor's public liability and property damage liability insurance covering all operations of the contract shall include removal of all exclusions for explosion, collapse, and underground. Builder's Risk and Fire and Extended Coverage Insurance are required.
 - 3) Automobile liability insurance on self-propelled vehicles used in connection with the Contract, whether owned, non-owned or hired; bodily injury liability and death of not less than \$300,000 for one person and \$500,000 for each accident; property damage limits of \$100,000 for each accident and \$300,000 aggregate for accidents during policy period.
 - 4) Indemnification as per GENERAL CONDITIONS.
- B. Owner shall have the right at any time to require public liability insurance and/or property damage liability insurance greater than that specified in the above paragraphs. If required, the additional premium or premiums payable shall be added to the bid price.
- C. The Contractor shall furnish four (4) signed copies of the Certificates of Insurance to the Engineer naming the Contractor, the Owner and the Engineer as the insured

SPECIAL CONDITIONS

and reflecting compliance with the foregoing requirements. Certificates of Insurance shall be received by Engineer before execution of the Contract.

7. PROJECT MEETINGS:

- A. Following execution of the contract, the Contractor will be required to attend a pre-construction meeting at a time and place designated by the Engineer.
- B. Project meetings shall be held from time to time at the request of the Owner or the Engineer. Contractors, when required, shall attend these meetings. If the principal of the firm does not attend the meetings, he shall send a representative that has full responsibility to bind the Contractor to any decisions reached.
- C. The Engineer or representative shall prepare a written report of said meetings covering the items discussed and the decisions reached. Copies of these reports will be sent to the firms and agencies represented.

8. MEASUREMENT AND PAYMENT:

- A. Scope of Payment: Separate payment will be made based on the Contractor's quantity of construction complete at the time of payment request, and at the time of acceptance by the Owner for only those items specifically listed in the proposal. Payment for extra work shall be made in accordance with GENERAL CONDITIONS, Item 11.3. Payment will be made as specified in Section 01040.
- B. The Owner may withhold an additional five percent (5%) from payments to the Contractor, in addition to the five percent (5%) standard retainage, such an amount or amounts as may be necessary to cover:
 - 1) Payments that may be earned or due for just claims for labor or materials furnished in and about the work.
 - 2) Defective work not remedied.
 - 3) Failure of the Contractor to make proper payments to subcontractors.
 - 4) Reasonable doubt that this Contract can be completed for the balance then unpaid.
 - 5) Evidence of damage to another Contractor.
 - 6) Extra cost of field engineering and inspection as defined hereinafter.

The Owner will reimburse and shall have the right to act as agent for the Contract in disbursing such funds as have been withheld pursuant to this paragraph to the party or parties who are entitled to payment therefrom. The Owner will render to the Contractor a proper accounting of all such funds disbursed on behalf of the Contractor.

Should the Contractor fail to complete the construction work within the time specified, Contractor shall reimburse Owner for all extra engineering and inspection costs necessitated by the continuance of the work beyond the time herein specified for completion. Such extra engineering costs charged to the Contractor as hereby agreed in no way constitutes a penalty, but said costs represent additional expense to the City beyond the liquidated damages, caused by delays in execution of the work by the Contractor. Such additional expense will be deducted from the monies due the Contractor at the time of final payment, recognizing any extensions of time granted by the Owner as herein provided.

- C. The Contractor shall notify the Engineer when work is considered to be complete and ready for final inspection. The Engineer will within ten (10) days make the final inspection and perform tests deemed necessary to confirm that provisions of

SPECIAL CONDITIONS

the Contract Documents are satisfied. The Owner will not accept work or make final payment to the Contractor until the Engineer has declared that the work of the Contractor is complete and in substantial conformance with the Contract Documents.

9. LIQUIDATED DAMAGES

- A. The work to be performed under this Agreement shall be completed in the time period specified in the FORM OF CONTRACT. It is agreed that the date of completion of the work is of prime importance and of the essence in this Agreement and that failure to complete the work on schedule will cause the Owner to sustain substantial damages.
- B. In the event that the Contractor shall fail to substantially complete the Project on or before **October 1, 2025**, or the time to which such completion may have been extended, the Contractor shall pay to the Owner the sum of **\$400.00 for each and every calendar day** that the time consumed in completing the work exceeds the time allowed.

Said sum is hereby fixed and agreed as the liquidated damages that the Owner will suffer by reason of such delay in view of the difficulty of accurately ascertaining the loss which the Owner will suffer by reason of Contractor's failure to meet the deadlines and Owners inability to move forward with the potential use or sale of the Project site, and is not imposed as a penalty. The Owner will deduct and retain out of the monies which may become due hereunder to the Contractor the amount of such liquidated damages, and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the Owner, the Contractor shall pay the difference upon demand by the Owner.

10. ENGINEER'S RESPONSIBILITY AND AUTHORITY:

- A. The reader shall disregard paragraph 9.6 of GENERAL CONDITIONS. That paragraph shall read as follows: "The Engineer shall decide any questions which may arise as to the quality and acceptability of the materials furnished, work performed, interpretation of the drawings and specifications and questions as to the acceptable fulfillment of the Contract on the part of the Contractor".
- B. Suspension of Work by the Engineer: During freezing, stormy or inclement weather work shall be suspended except such as, in the Engineer's opinion, can be accomplished in an acceptable manner. Permission to work during such weather shall in no way be construed as a release of the Contractor's responsibility regarding the quality of work to be performed. Reader's attention is directed to GENERAL CONDITIONS, ITEM 9.11.

11. CONTRACTOR'S EMPLOYEES:

Neither the Contractor nor its subcontractors shall employ any person whose physical or mental condition is such that their employment will endanger the health and safety of said person, or others employed or contracted on the Project.

The Contractor shall not commit any of the following employment practices and agrees to include the following clauses as prohibited in any subcontracts:

SPECIAL CONDITIONS

To discharge from employment or refuse to hire any individual because of sex, race, color, religion, national origin, or other protected class under State or Federal law.

To discriminate against any individual in terms, conditions or privileges of employment because of sex, race, color, religion, national origin, or other protected class under State or Federal law.

12. SAFETY:

- A. Work included under this Contract shall be done in accordance with the Occupational Safety and Health Act, as amended, the Iowa Occupational Safety and Health Act, as amended, , the National Consensus Standards and the established Federal standards as amended and enforced by the governmental authority responsible or the local enforcement of the Act. Enforcement and responsibility for fulfilling this provision of the specifications shall rest solely with the Contractor, its supervisors and/or superintendents or, foreperson(s), and in no way shall rest with the Owner or the Engineer.
- B.
- C. If Engineer finds that a danger exists which will reasonably be expected to cause death or serious physical harm immediately, Engineer shall notify Contractor thereof and of the steps to be taken as may be necessary to avoid, correct or remove such imminent danger.
- D. The Contractor shall provide and maintain, at his own expense and on a 24-hour basis, all necessary safeguards such as watchmen, warning signs or signals, barricades and night lights at unsafe places at or near the work. Special care shall be exercised to prevent vehicles, pedestrians and equipment from falling into open trenches, foundations, holes/cavities and the like, or being otherwise harmed as a result of the work.

13. QUALITY REQUIREMENTS:

In the execution of this Contract, all materials, methods and equipment shall be of accepted high standards. Where trade names are used, it is distinctly required that material or equipment of equal quality and characteristics may be offered for use by the Contractor, subject to the approval of the Owner's Representative.

The Owner's Representative shall observe and report upon all workmanship, equipment and materials used in the execution of the Contract to the Owner. It is the purpose of this service not only to ensure proper conformity with the requirements of the drawings and plans and specifications, but to aid the Contractor in producing the required results in the most economical manner consistent with good workmanship and standard practice.

14. COORDINATION OF CONSTRUCTION:

If work by other Contractors or City of Oelwein personnel should occur simultaneously on the project site, cooperation among all parties must be maintained. The Contractor shall coordinate, as directed by the Engineer, all working hours and locations.

15. CONSTRUCTION BOUNDARIES:

- A. Construction shall be performed within the right-of-way limits and designated temporary construction easements (if acquired) of the city streets as shown on the

SPECIAL CONDITIONS

- plans.
- B. Related off-site work shall be performed only with Engineer's written approval.
 - C. Contractor shall make arrangements for storage space for materials and equipment. Said arrangements shall be in writing and the Engineer shall be provided with a copy of the agreement.
16. MAINTENANCE AND CONTROL OF ACCESS AND TRAFFIC:
- A. Emergency traffic shall be provided reasonable access at all times.
 - B. The Contractor shall provide, install and maintain adequate signs, barricades, flagmen and warning lights to meet local, County and State requirements at all times during construction operations at no additional expense to the Owner.
 - C. Construction signage shall be in conformance with the Manual on Uniform Traffic Control Devices and Iowa Department of Transportation requirements.
 - D. The Contractor shall provide one way traffic at all times for patching operations. Traffic shall be open to two-way traffic during nighttime hours.
17. SURVEYS AND STAKING:
- The engineer shall provide horizontal and vertical control of structures in the form of benchmarks or reference points and base lines to be used in completing the construction, if and when applicable. Said control will be provided on a one-time-only basis at no cost to the Contractor. All other services required by the Contractor to perform the work shall be his cost and shall be included in his bid price.
18. FIELD TESTS:
- A. Materials and compaction testing, gradations slump, entrained air, etc., are not required to be performed by the Contractor. The City of Oelwein will employ a certified testing agency to accomplish field testing required by the Engineer with the exception of maturity testing of concrete. Maturity testing of the pavement shall be the responsibility of the Contractor.
 - B. The Contractor will notify the Engineer when he considers his work to be complete and ready for testing and the Owner's testing agency will perform such tests as are indicated to determine if performance has been obtained. If required performance is not indicated in the tests, the Contractor will be required to make the necessary corrections and upon completion of the corrections demonstrate that the required performance has been obtained. Any re-testing required as a result of replacing faulty work shall be paid for by the Contractor.
19. PREFERENCE FOR LABOR AND MATERIALS:
- By virtue of statutory authority, preference will be given to products and provisions grown and coal produced within the State of Iowa, and to Iowa domestic labor to the extent lawfully required under Iowa statutes, and to domestic materials by the Contractor, subcontractors, materialmen, and suppliers in performance of this contract; provided that the award of contract will be made to the lowest responsive, responsible bidder submitting the lowest responsible bid, which shall be determined without regard to state or local law whereby preference is given on factors other than the amount of bid.
20. RESOURCE RECOVERY- FLY ASH
- The Contractor may purchase cement, concrete, or cement or concrete products

SPECIAL CONDITIONS

containing fly ash. Authorization from the Engineer shall be requested for the use of fly ash as an aggregate additive to determine its suitability for the intended application.

21. **WORK DURING AN EMERGENCY:**
The Contractor shall perform work and shall furnish and install any materials and equipment necessary during an emergency endangering life or property. In all cases Contractor shall notify the Engineer of the emergency as soon as possible, but Contractor shall not wait for instructions before proceeding to properly protect both life and property.
22. **MINOR WORK:**
Any minor work not specifically mentioned in the Plans and Specifications or shown on the drawings, but obviously necessary for the proper completion of the work shall be considered as being a part of and included in the Contract and shall be executed in the proper manner. The Contractor will not be entitled to extra time or additional compensation for this work.
23. **CONSTRUCTION FACILITIES:**
The Contractor will arrange for any utilities required to perform the Project and said utility expense will be borne by the Contractor.
24. **UTILITIES ADJUSTMENTS:**
Utilities adjustments may be performed by utility companies or others concurrently with the work on this project. Contractor shall be solely responsible for coordination with utility companies.
25. **EXCAVATION:**
Excavation shall be made true to the depth, slopes, grade and width as called for on the Drawings and as otherwise stated or ordered by the Engineer. No material that would be classified as rock or stone which could not be passed through a three (3) inch circular ring shall be left within six (6) inches of the top of the finished subgrade. Excavation and disposal of excess material will be included in sanitary sewer piping costs and will not be paid by the Owner as a separate item.
26. **SHEETING, SHORING AND BRACING:**
Construction sheeting, shoring and bracing to hold walls of excavation shall be provided as required by applicable State and Federal law; to provide safety for workers; to protect existing utilities, streets or structures; or to permit construction in the dry.
27. **SURFACE RESTORATION:**
Surface restoration is to be provided by Contractor for any storage area or construction area that has been disturbed or blemished. Return to original or better condition at no additional cost to Owner.
28. **CONSTRUCTION RECORD DOCUMENTS:**
The Contractor shall maintain at the site a set of drawings on which a daily record of changes and deviations of work shall be recorded. The drawings shall be turned over to the Engineer upon project completion. Final payment to the Contractor will not be made

SPECIAL CONDITIONS

until complete recorded documents are received by the Engineer.

29. **WASTE SITES:**

Waste materials and debris shall be disposed of at a sanitary landfill at no expense to the Owner. Waste soils shall be piled, leveled or disposed of at Owner approved locations.

30. **CLEANUP:**

The Contractor shall be responsible for removal of all debris remaining at the project site which is the result of the Project performance and completion.. Cleanup shall be performed as directed by the Engineer. Final Project site cleanup shall be completed to the satisfaction of the Owner and Engineer before the project will be considered Substantially complete and final payment will be made.

END OF SPECIAL CONDITIONS

SPECIAL CONDITIONS

INDEX

PART I - GENERAL

- 1.1 Pre-Bid Meeting
- 1.2 Pre-Construction Conference
- 1.3 Progress Meetings
- 1.4 Pre-Installation Conference

PART II - PRODUCTS

Not Used

PART III - EXECUTION

Not Used

PART I - GENERAL

1.1 PRE-CONSTRUCTION CONFERENCE

- A. Contractor shall provide date and time available for meeting. Engineer will schedule a conference after owner's acceptance of bid to Contractor.
- B. Attendance required: Owner, Engineer, Contractor, Contractor's foreman for the project, sub-contractor(s).
- C. Agenda :
 - 1. Distribution of copies of Contract Documents
 - 2. List of sub-contractors, progress schedule, schedule of values, any other items as requested by Engineer or Owner
 - 3. Designation of personnel representing all parties involved
 - 4. Discussion for procedures and processing field decisions, application for payments, proposal request, Change Orders, and closeout documents
 - 5. Scheduling
 - 6. Use of utilities and premises by Contractor
 - 7. Owner's requirements
 - 8. Temporary utilities
 - 9. Security and cleaning procedures
 - 10. Testing requirements and procedures
 - 11. Record documents

SPECIAL CONDITIONS

12. Shop drawing and submittal reviews
13. Completion date and request for time
14. List of documents for Project Closeout
15. Scheduling of site observations by Engineer
16. Substantial and final inspection and acceptance
17. Any other items as required

1.2 PROGRESS MEETINGS

- A. The Engineer has the option to schedule and administer meetings from start of construction at intervals as required.
- B. The Engineer shall make arrangements for meetings, preside at meetings, record minutes, distribute copies of recorded minutes to participants.
- C. Attendance required: Job foreman, Owner, Engineer at minimum. Major sub-contractors and material suppliers that are affected by critical agenda items are also required.
- D. Agenda:
 1. Review minutes of previous meeting
 2. Review progress of project
 3. Problems observed or foreseen
 4. Field decisions made or that need to be made
 5. Review of submittals, schedule and status of submittals
 6. Review of off-site fabrication and delivery schedule
 7. Review progress schedule and revisions needed
 8. Coordination issues
 9. Review of quality and construction standards
 10. Effect of any proposed changes on schedule and coordination
 11. Other issues related to the Project

PART II - PRODUCTS

Not used

PART III - EXECUTION

Not used

END OF SECTION

**Engineers Joint Documents Committee
Design and Construction Related Documents
Instructions and License Agreement**

Instructions

Before you use any EJCDC document:

1. Read the License Agreement. You agree to it and are bound by its terms when you use the EJCDC document.
2. Make sure that you have the correct version for your word processing software.

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This Agreement shall be governed by the laws of the State of Iowa. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Zachary Jones
Legal Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (571) 396-5495
e-mail: zach@ejcdc.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

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 Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

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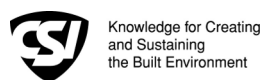
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These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

TABLE OF CONTENTS

Page

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY	6
1.01 <i>Defined Terms</i>	6
1.02 <i>Terminology</i>	8
ARTICLE 2 - PRELIMINARY MATTERS	9
2.01 <i>Delivery of Bonds and Evidence of Insurance</i>	9
2.02 <i>Copies of Documents</i>	9
2.03 <i>Commencement of Contract Times; Notice to Proceed</i>	9
2.04 <i>Starting the Work</i>	9
2.05 <i>Before Starting Construction</i>	9
2.06 <i>Preconstruction Conference</i>	9
2.07 <i>Initial Acceptance of Schedules</i>	9
ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE	10
3.01 <i>Intent</i>	10
3.02 <i>Reference Standards</i>	10
3.03 <i>Reporting and Resolving Discrepancies</i>	10
3.04 <i>Amending and Supplementing Contract Documents</i>	11
3.05 <i>Reuse of Documents</i>	11
3.06 <i>Electronic Data</i>	11
ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS	11
4.01 <i>Availability of Lands</i>	11
4.02 <i>Subsurface and Physical Conditions</i>	12
4.03 <i>Differing Subsurface or Physical Conditions</i>	12
4.04 <i>Underground Facilities</i>	13
4.05 <i>Reference Points</i>	13
4.06 <i>Hazardous Environmental Condition at Site</i>	13
ARTICLE 5 - BONDS AND INSURANCE	14
5.01 <i>Performance, Payment, and Other Bonds</i>	14
5.02 <i>Licensed Sureties and Insurers</i>	15
5.03 <i>Certificates of Insurance</i>	15
5.04 <i>Contractor's Liability Insurance</i>	15
5.05 <i>Owner's Liability Insurance</i>	16
5.06 <i>Property Insurance</i>	16
5.07 <i>Waiver of Rights</i>	17
5.08 <i>Receipt and Application of Insurance Proceeds</i>	17
5.09 <i>Acceptance of Bonds and Insurance; Option to Replace</i>	17
5.10 <i>Partial Utilization, Acknowledgment of Property Insurer</i>	18
ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES	18
6.01 <i>Supervision and Superintendence</i>	18
6.02 <i>Labor; Working Hours</i>	18
6.03 <i>Services, Materials, and Equipment</i>	18
6.04 <i>Progress Schedule</i>	18
6.05 <i>Substitutes and "Or-Equals"</i>	19
6.06 <i>Concerning Subcontractors, Suppliers, and Others</i>	20
6.07 <i>Patent Fees and Royalties</i>	21
6.08 <i>Permits</i>	21
6.09 <i>Laws and Regulations</i>	21
6.10 <i>Taxes</i>	22
6.11 <i>Use of Site and Other Areas</i>	22
6.12 <i>Record Documents</i>	22
6.13 <i>Safety and Protection</i>	22
6.14 <i>Safety Representative</i>	23
6.15 <i>Hazard Communication Programs</i>	23

6.16	<i>Emergencies</i>	23
6.17	<i>Shop Drawings and Samples</i>	23
6.18	<i>Continuing the Work</i>	24
6.19	<i>Contractor’s General Warranty and Guarantee</i>	24
6.20	<i>Indemnification</i>	24
6.21	<i>Delegation of Professional Design Services</i>	25
ARTICLE 7 - OTHER WORK AT THE SITE		25
7.01	<i>Related Work at Site</i>	25
7.02	<i>Coordination</i>	26
7.03	<i>Legal Relationships</i>	26
ARTICLE 8 - OWNER’S RESPONSIBILITIES		26
8.01	<i>Communications to Contractor</i>	26
8.02	<i>Replacement of Engineer</i>	26
8.03	<i>Furnish Data</i>	26
8.04	<i>Pay When Due</i>	26
8.05	<i>Lands and Easements; Reports and Tests</i>	26
8.06	<i>Insurance</i>	26
8.07	<i>Change Orders</i>	26
8.08	<i>Inspections, Tests, and Approvals</i>	26
8.09	<i>Limitations on Owner’s Responsibilities</i>	27
8.10	<i>Undisclosed Hazardous Environmental Condition</i>	27
8.11	<i>Evidence of Financial Arrangements</i>	27
ARTICLE 9 - ENGINEER’S STATUS DURING CONSTRUCTION.....		27
9.01	<i>Owner’s Representative</i>	27
9.02	<i>Visits to Site</i>	27
9.03	<i>Project Representative</i>	27
9.04	<i>Authorized Variations in Work</i>	27
9.05	<i>Rejecting Defective Work</i>	27
9.06	<i>Shop Drawings, Change Orders and Payments</i>	28
9.07	<i>Determinations for Unit Price Work</i>	28
9.08	<i>Decisions on Requirements of Contract Documents and Acceptability of Work</i>	28
9.09	<i>Limitations on Engineer’s Authority and Responsibilities</i>	28
ARTICLE 10 - CHANGES IN THE WORK; CLAIMS		28
10.01	<i>Authorized Changes in the Work</i>	28
10.02	<i>Unauthorized Changes in the Work</i>	29
10.03	<i>Execution of Change Orders</i>	29
10.04	<i>Notification to Surety</i>	29
10.05	<i>Claims</i>	29
ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK.....		30
11.01	<i>Cost of the Work</i>	30
11.02	<i>Allowances</i>	31
11.03	<i>Unit Price Work</i>	31
ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES		32
12.01	<i>Change of Contract Price</i>	32
12.02	<i>Change of Contract Times</i>	33
12.03	<i>Delays</i>	33
ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.....		33
13.01	<i>Notice of Defects</i>	33
13.02	<i>Access to Work</i>	33
13.03	<i>Tests and Inspections</i>	33
13.04	<i>Uncovering Work</i>	34
13.05	<i>Owner May Stop the Work</i>	34
13.06	<i>Correction or Removal of Defective Work</i>	34
13.07	<i>Correction Period</i>	34
13.08	<i>Acceptance of Defective Work</i>	35
13.09	<i>Owner May Correct Defective Work</i>	35
ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION		36
14.01	<i>Schedule of Values</i>	36
14.02	<i>Progress Payments</i>	36
14.03	<i>Contractor’s Warranty of Title</i>	37
14.04	<i>Substantial Completion</i>	37

14.05	<i>Partial Utilization</i>	38
14.06	<i>Final Inspection</i>	38
14.07	<i>Final Payment</i>	38
14.08	<i>Final Completion Delayed</i>	39
14.09	<i>Waiver of Claims</i>	39
ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION.....		39
15.01	<i>Owner May Suspend Work</i>	39
15.02	<i>Owner May Terminate for Cause</i>	39
15.03	<i>Owner May Terminate For Convenience</i>	40
15.04	<i>Contractor May Stop Work or Terminate</i>	40
ARTICLE 16 - DISPUTE RESOLUTION		41
16.01	<i>Methods and Procedures</i>	41
ARTICLE 17 - MISCELLANEOUS.....		41
17.01	<i>Giving Notice</i>	41
17.02	<i>Computation of Times</i>	41
17.03	<i>Cumulative Remedies</i>	41
17.04	<i>Survival of Obligations</i>	41
17.05	<i>Controlling Law</i>	41
17.06	<i>Headings</i>	41

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial 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 which is evidence of the agreement between Owner and Contractor covering the Work.

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

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

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

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

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

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

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

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

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

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

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

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

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

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

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

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

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

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

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

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

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

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

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

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

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

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

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

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

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

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

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

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

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

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain

administrative requirements and procedural matters applicable thereto.

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

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

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

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

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

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

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

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

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times

but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. Intent of Certain Terms or Adjectives

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered", "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. Day

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents, or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
- c. has been damaged prior to Engineer's - recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. Furnish, Install, Perform, Provide

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

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

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

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

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

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

2.02 Copies of Documents

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement

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

2.04 Starting the Work

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

2.05 Before Starting Construction

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

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

2. a preliminary Schedule of Submittals; and

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

2.06 Preconstruction Conference

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 Initial Acceptance of Schedules

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

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

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

3.02 *Reference Standards*

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

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

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or

responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. Resolving Discrepancies

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

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

b. the provisions of any Laws or Regulations applicable to the performance of the Work

(unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

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

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

1. A Field Order;

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

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

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

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

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

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

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

sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

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

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

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

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

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

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

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

4.03 *Differing Subsurface or Physical Conditions*

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

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

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

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

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

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

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

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

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

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

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

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

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

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

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

4.04 *Underground Facilities*

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

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

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

- a. reviewing and checking all such information and data,
- b. locating all Underground Facilities shown or indicated in the Contract Documents,
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will

promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

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

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

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

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

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

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

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

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to

entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

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

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified

in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

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

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

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

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

5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection

from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

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

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

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

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

B. The policies of insurance required by this Paragraph 5.04 shall:

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

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

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

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

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

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

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

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

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

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

6. include testing and startup; and

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

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

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

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any

deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

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

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:

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

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

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

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

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

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract

Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

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

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or

received from the superintendent shall be binding on Contractor.

6.02 *Labor; Working Hours*

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

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

6.03 *Services, Materials, and Equipment*

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

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

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

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

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

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

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

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

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

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

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

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

C. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

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

E. Engineer's Cost Reimbursement: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract

Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

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

6.06 Concerning Subcontractors, Suppliers, and Others

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

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

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual

or entity except as may otherwise be required by Laws and Regulations.

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

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

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

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

6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

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

6.08 *Permits*

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

6.09 *Laws and Regulations*

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

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

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

6.10 Taxes

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

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

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

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

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

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

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

6.12 Record Documents

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

6.13 Safety and Protection

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

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Draw-

ings or Specifications or to the acts or omissions of Owner or Engineer or , or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals , any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures

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

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

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

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

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

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents

with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review

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

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

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures

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

6.18 Continuing the Work

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or

disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

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

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or

arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

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

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

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

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal

shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 *Related Work at Site*

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

1. written notice thereof will be given to Contractor prior to starting any such other work; and
2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and

properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

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

7.02 *Coordination*

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

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

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

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

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

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Insurance*

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

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, 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.

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

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

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

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

9.02 *Visits to Site*

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

Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

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

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

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

9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

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

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show

partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

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

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

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

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

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall

promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

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

10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

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

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

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

10.04 *Notification to Surety*

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

10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,

2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

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

11.01 *Cost of the Work*

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

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

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and

Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

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

5. Supplemental costs including the following:

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

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

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

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

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

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have

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

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

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

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

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

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

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

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

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

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

C. Contractor's Fee: When all the Work is performed on the basis of cost-plus, Contractor's fee shall

be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 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

1. Contractor agrees that:

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

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

C. Contingency Allowance

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

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

11.03 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. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

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

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

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

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

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

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an

allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

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

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

1. a mutually acceptable fixed fee; or

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

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

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

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

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

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted

by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

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

12.03 *Delays*

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

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

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

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

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
3. as otherwise specifically provided in the Contract Documents.

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

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to

be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

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

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

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

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

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

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

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

13.08 *Acceptance of Defective Work*

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

13.09 *Owner May Correct Defective Work*

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

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

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

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress

payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. Applications for Payments

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

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications*

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

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

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and

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

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent

inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

- a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling Owner to a set-off against the amount recommended; or
- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

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

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 Contractor's Warranty of Title

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

14.04 Substantial Completion

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, , Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial

Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

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

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

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

14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals

that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. Application for Payment

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

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. consent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

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

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations

under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

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

14.08 *Final Completion Delayed*

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

14.09 *Waiver of Claims*

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

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

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance

with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

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

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

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

3. Contractor's disregard of the authority of Engineer; or

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

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.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 all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

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

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

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

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

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

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be

governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or

2. agrees with the other party to submit the Claim to another dispute resolution process, or

3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

FORM OF PROPOSAL

FORM OF PROPOSAL
City of Oelwein, Iowa
27 SOUTH FREDERICK BUILDING

NOTE TO BIDDERS: Please do not use the Form of Proposal bound within these specifications. Separate copies of this Form of Proposal will be furnished to the bidders with each set of documents purchased from the Engineer.

BID DATE: April 10, 2025, @ 1:30 p.m.

NAME OF BIDDER: _____

ADDRESS OF BIDDER: _____

TO: City Clerk
City of Oelwein
Oelwein, Iowa 50662

GENTLEMEN:

- A. The undersigned bidder submits herewith bid security in the amount of \$ _____ in accordance with the terms set forth in the instructions to Bidders.
- B. The undersigned bidder, having examined the drawings, specifications, Instructions to Bidders, the location and site of proposed work, the nature of the work to be done, extent and conditions of existing sanitary sewer system affecting, or affected by the proposed work, and being fully advised as to the extent and character of the work and all existing local conditions, relative to construction difficulties, hazards, labor transportation, hauling, trucking and other factors affected by or affecting the work covered by this proposal as outlined in the specifications and drawings, including Addendum No's and _____.

HEREBY PROPOSES to furnish all materials, tools, appliances, and equipment; and to perform all necessary labor required to complete the "27 South Frederick" project for the City of Oelwein and all items incidental thereto and to perform work in accordance with the drawings and specifications for said project, including all items of expense and profit.

- C. We further propose:
 - 1. To do all extra work which may be required to complete the work contemplated at unit price or lump sums, as herein stated.
 - 2. To execute the Form of Contract within ten (10) calendar days following receipt of written Notice of Award.
 - 3. To complete the work as outlined in the Drawings and Specifications.
 - 4. To submit before beginning work on the project, the list of proposed subcontractors (if any) and required Certificate of Insurance.
 - 5. To begin the project no sooner than **August 4, 2025, at 8:00 a.m.** and to complete the project prior to **October 1, 2025.**

FORM OF PROPOSAL

- D. The undersigned bidder certifies that this proposal is made in good faith, without collusion or connection with any other person bidding on the work.
- E. The undersigned bidder states that this proposal is made in conformity with the Contract Documents and agrees that, in the event of any discrepancies or differences between any conditions of his proposal and the Contract Documents prepared by VJ Engineering the provisions of the latter shall prevail.
- F. The undersigned bidder further states that the total bid is based on estimated quantities, and the actual amount will be adjusted in accordance with the final determination of quantities involved, as explained in the SPECIFICATIONS. In case of error in the item totals quoted, the proper figure based on the estimated quantities and the unit prices quoted shall govern.
- G. **The undersigned bidder further acknowledges that a tax-exempt certificate will be issued for all supplies to be used for this project.**

FIRM: _____

BY: _____

(TITLE)

(BUSINESS ADDRESS)

(SEAL - IF BID IS BY A CORPORATION)

PARTNERSHIPS: FURNISH FULL NAME OF ALL PARTNERS

FORM OF PROPOSAL

BASE BID:

Having examined the Place of The Work and all matters referred to in the Instructions to Bidders and the Contract Documents prepared by VJ Engineering for the above-mentioned project, we, the undersigned, do hereby offer to enter into a Contract to perform the Work for the Lump Sum of:

_____ dollars

(\$ _____).

SECTION 01010
GENERAL REQUIREMENTS AND INFORMATION

INDEX

PART I - GENERAL

- 1.1 Intent
- 1.2 Interpretation
- 1.3 Drawings and Specifications
- 1.4 Standards and Codes
- 1.5 Materials Test
- 1.6 Responsibility of Contractor
- 1.7 Information for Engineer
- 1.8 Submittal Procedures
- 1.9 Construction Progress Schedules
- 1.10 Shop Drawings
- 1.11 Incidental Work
- 1.12 Approval of Materials
- 1.13 Existing Utilities
- 1.14 Final Review and Acceptance

1.1 INTENT

- A. To set forth requirements of performance, type of equipment or structure desired and standards of materials and construction.
- B. To describe specifically Work set out in Contract Documents unless otherwise specifically indicated.
- C. To require performance of complete Work in spite of omission of specific reference to any minor component parts.
- D. To provide for new materials and equipment unless otherwise included.

1.2 INTERPRETATION

- A. Report errors or ambiguities in specifications to Engineer as soon as detected; Engineer will answer questions regarding and interpret intended meaning of specifications by issuing an addendum.

1.3 DRAWINGS AND SPECIFICATIONS

- A. Engineer will furnish up to four sets of Drawings and Specifications after award of contract. Contractor shall compensate Engineer for printing costs for additional copies required.
- B. Subcontractor will be furnished copies only at request of Contractor. Engineer will be compensated for printing costs.
- C. Contractor shall provide one set of Drawings and Specifications for each foreman or superintendent in charge of each crew on job.

1.4 STANDARDS AND CODES

- A. Perform work in accordance with best present-day installation and construction practices.

SECTION 01010
GENERAL REQUIREMENTS AND INFORMATION

- B. Conform to and test materials in accordance with the latest editions and revisions to the following codes and standards unless specifically noted otherwise:
1. American Association of State Highway and Transportation Officials (ASSHTO).
 2. American Concrete Institute (ACI).
 3. American Institute of Steel Construction (AISC).
 4. American National Standards Institute (ANSI).
 5. American Society for Testing Materials (ASTM).
 6. American Standards Association (ASA).
 7. American Water Works Association (AWWA).
 8. American Welding Society (AWS).
 9. Federal Inspections (FS).
 10. Hydraulic Institute (HI).
 11. Institute of Electrical and Electronic Engineers (IEEE).
 12. Iowa Department of Transportation (IDOT); latest edition of Standard Specifications and addenda.
 13. Iowa Occupational Safety and Health Act of 1972 (Chapter 83, Code of Iowa 1983) (IOSHA).
 14. Manual of Accident Prevention in Construction by Associated General Contractors of America, Inc. (AGC).
 15. National Electrical Manufacturers Association (NEMA).
 16. National Electrical Safety Code (NESC).
 17. National Institute for Occupational Safety and Health (NIOSH).
 18. National Lumber Manufacturer's Association (NLMA).
 19. National Safety Council (NSC).
 20. Occupational Safety and Health Act of 1970 (Public Law 91-596) (OSHA).
 21. Steel Structures Painting Council (SSPC).
 22. Underwriters' Laboratories, Inc. (UL).
 23. Standards and Codes of the State of Iowa and applicable local standards and codes of the Owner.
 24. Other standards and codes which may be applicable to acceptable standards of the industry for equipment, materials and installation under the contract.

1.5 MATERIALS TESTS

- A. Includes all materials tests or tests specified hereinafter.
- B. Employ approved testing laboratory to show that construction materials comply with Specifications.
- C. Provide samples of materials required for laboratory tests and pay cost of all tests including transportation charges on samples.
- D. Incorporate no materials into work until laboratory tests have been furnished which indicate that materials are in compliance with the Specifications.
- E. All materials subject to sampling, testing, inspection and rejection at site by Engineer.

1.6 RESPONSIBILITY OF CONTRACTOR

- A. Protection of his work.

SECTION 01010
GENERAL REQUIREMENTS AND INFORMATION

- B. Protection of all property from injury or loss resulting from his operations.
- C. Replace or repair objects sustaining any such damage, injury or loss to satisfaction of Owner and Engineer.
- D. Accept full responsibility for all construction means, methods, sequences, techniques, proceedings, property and personal safety on the project site, including the same for all subcontractors.
- E. Cooperate with Owner, Engineer and representatives of utilities in locating underground utility lines and structures.
- F. Keep cleanup current with construction operations.
- G. Comply with all federal, State of Iowa and City laws and ordinances.

1.7 INFORMATION FOR ENGINEER

- A. After execution of contract, submit following information and drawings for Engineer's approval. Total number of approved copies required for distribution: Four (4) plus copies required by Contractor.
 - 1. Manufacturer's specifications and catalog data for all materials, valves, appurtenances and other special items.
 - 2. Pipe and fittings manufacturer and type of pipe joint used.
 - 3. List of Subcontractors, if any, to which the prime contractor proposes to sublet a portion of the work.
 - 4. Such other information as Engineer may request.

1.8 SUBMITTAL PROCEDURES

- A. Sequentially number the transmittal forms. Re-submittals to have original number with an alphabetic suffix.
- B. Identify project, contractor, subcontractor or supplier; pertinent drawing sheet and detail number(s), and specification sections number, as appropriate.
- C. Apply Contractor's stamp, dated, signed or initialed, certifying that review, verification of products required, field dimensions, adjacent construction work, and coordination of information, is in accordance with the requirements of the Work and Contract Documents.
- D. Provide space for Contractor and Engineer review stamps.
- E. Revise and resubmit submittals as required, identify all changes made since previous submittal.

1.9 CONSTRUCTION PROGRESS SCHEDULES

- A. Submit initial progress schedule in duplicate within 15 days after project award date for Engineer review.
- B. Revise and resubmit as required.
- C. Submit revised schedules with each application for payment, identifying changes since previous version.
- E. Indicate estimated percentage of completion for each item of Work at each submission.
- F. Indicate submittal dates required for shop drawings, product data, samples, and product delivery dates.

1.10 SHOP DRAWINGS

SECTION 01010
GENERAL REQUIREMENTS AND INFORMATION

- A. Intent of Engineer's approval: to assist Contractor in interpreting specifications and drawings.
- B. Contractor's Responsibility: To check drawings prior to submission for coordination and conformance with contract documents; do not submit without checking.
- C. Approval does not relieve Contractor of responsibility for errors in shop drawings and will not relieve him of any responsibility assumed under Contract.
- D. Prior to submission of shop drawings and catalog data to Engineer, affix Contractor's stamp with signature of responsible person to show that material submitted has been checked and approved.
- E. If the equipment proposed varies in detail from the drawings or illustrations furnished, or if it varies from any of the requirements specified herein, such variations shall be noted by the manufacturer/supplier.

1.11 INCIDENTAL WORK

Any incidental work not specifically mentioned in the specifications or shown on the plans but obviously necessary for the proper completion of the work shall be considered as being a part of and included in the Contract and shall be executed in the proper manner and the Contractor shall not be entitled to extra time or additional compensation for same.

1.13 EXISTING UTILITIES

- A. The location of utilities indicated on the drawings are approximate only. The exact location and elevation of all public utilities shall be determined by the Contractor, prior to excavation Contractor shall notify **UTILITY COMPANIES 48 HOURS IN ADVANCE** so they may locate their utility for the contractor. It shall be the duty of the Contractor to ascertain whether any additional utilities other than those shown on the drawings may be present. Existing underground utilities indicated on the drawings are shown for convenience only and the Owner or Engineer accepts no responsibility for improper locations or failure to show utility locations on the drawings. The Contractor shall be responsible to excavate and locate exact locations of utility crossings before any excavation.
- B. Contractor is fully responsible for repairing damage to utilities and services due to his work. Damages to Utilities/Service during construction are at no expense to the Owner.
- C. Service lines for existing gas, water and telephone utilities have not been shown.
- D. The Contractor shall be responsible to contact all utility companies to confirm utility locations and their depths. If the utility company fails to locate existing underground facilities with 48 hours of request, the Contractor shall immediately notify the Engineer in writing and shall stop work in the area requiring utility locations. Any delay caused by the FAILURE of the utility company to provide locations within 48 hours may provide the basis for an extension of the contract completion date.
- F. Utilities not shown on drawings that are determined in the field to be in direct: Stop work and notify Engineer immediately. Engineer will determine course of action.
- H. The City and utility companies shall have access to the project during construction to make repairs or extensions of service. No claims for additional compensation will be allowed for delays caused by such work.

SECTION 01010
GENERAL REQUIREMENTS AND INFORMATION

- I. Work to maintain utilities shall be considered incidental to construction regardless of the work required to maintain them.

1.14 FINAL REVIEW AND ACCEPTANCE

- A. Notify Engineer when Project is considered complete and ready for final review.
- B. Owner will accept work and make final payment to Contractor:
 - 1. When Engineer has certified that they have reviewed the work of the Contractor and stated that the work is complete and in compliance with the Drawings and Plans and Specifications.
 - 2. When Contractor has furnished the Owner or Engineer with required documents as set forth within the Plans and Specifications.
 - 3. When all government agencies involved have indicated in writing, that the work is complete and acceptable.

END OF SECTION 01010

**SECTION 01040
MEASUREMENT AND PAYMENT**

INDEX

PART I - GENERAL

- 1.1 Standard of Measurements
- 1.2 Scope of Payment

PART II - BID ITEMS

- 2.1 Contract Base Bid Items

PART I - GENERAL

1.1 STANDARD OF MEASUREMENTS

- A. Work completed under the contract shall be verified by the Engineer. Payment will be based on the actual quantity of work completed in advance of pay request submitted by Contractor to Engineer for review and recommendation to Owner for payment.

1.2 SCOPE OF PAYMENT

- A. The contractor shall accept the compensation as herein provided as full payment for furnishing materials, labor, tools and equipment and for performance of work under the contract; also, for costs arising from the action of the elements, or from any unforeseen difficulties which may be encountered during the execution of the work and up to the time of acceptance.
- B. Construction items may be bid as a lump sum item. Completion of this work is required. If a separate pay item is not provided for this work, it is to be considered incidental to the project and no separate payment will be made.

PART II BID ITEMS

2.1 CONTRACT BASE BID ITEMS

- 1. **DEMOLITION, LS**
Lump Sum price includes all materials, equipment, and labor.
- 2. **SITE RESTORATION, LS**
Lump Sum price includes all materials, equipment, and labor.

**END OF SECTION 01040
BASE BID ITEMS**

SECTION 01290
PAYMENT PROCEDURES

PART 1 - GENERAL

1.1 SUMMARY

- A. This Section specifies administrative and procedural requirements necessary to prepare and process Applications for Payment.

1.2 PAYMENT

END OF SECTION 01290

**SECTION 02000
SITE WORK**

PART 1-GENERAL

1.1 DEMOLITION

- A. This section includes removal and disposal of the existing building and other material as required.

1.2 PROTECTION

- A. Protection shall be provided for, but not necessarily limited to, the following:
 - 1. Property area and adjacent property and structures.
- B. Protection shall be defined as the minimum requirements necessary to ensure that when the project is completed, the Owner's property will be left in the same condition as it was when the project started.

1.3 SITE REPAIR

- A. Repair or replace any damaged curbs, sidewalks, rutted yard areas, shrubs, trees, sprinkler system, etc.
- B. Restore areas and items to their original condition prior to construction.

1.4 CLEAN-UP AND DAMAGE REPAIR

- A. Any existing items, structures, or areas damaged during the course of the demolition shall be repaired and restored to a condition equal to or better than it was prior to commencement of work.

END OF SECTION 02000

SECTION 02221

BUILDING DEMOLITION

PART 1 - GENERAL

1.1 SUMMARY

- A. This Section includes demolition and removal of the following:
 - 1. Building
 - 2. Terminate and cap utility services
 - 3. Site restoration.

1.2 DEFINITIONS

- A. Remove: Detach items from existing construction and legally dispose of them off-site unless indicated to be removed and salvaged or recycled.
- B. Existing to Remain: Existing foundation and slab elements below new final grade.

1.3 MATERIALS OWNERSHIP

- A. Historic items, relics, and similar objects including, but not limited to, cornerstones and their contents, commemorative plaques and tablets, antiques, and other items of interest or value to Owner that may be encountered during building demolition remain Owner's property. Carefully remove and salvage each item or object in a manner to prevent damage and deliver promptly to Owner.

1.4 SUBMITTALS

- A. Qualification Data: For the following:
 - 1. Demolition firm.
- B. Proposed Protection and Control Measures: Submit statement or drawing that indicates the measures proposed for use, proposed locations, and proposed time frame for their operation. Identify options if proposed measures are later determined to be inadequate. Include measures for the following:
 - 1. Environmental protection.
 - 2. Dust control.
 - 3. Noise control.
 - 4. Adjacent building protection measures.
- C. Schedule of Building Demolition Activities: Indicate detailed sequence of demolition and removal work, with starting and ending dates for each activity, interruption of utility services, and locations of temporary protection and means of egress.

- D. Predemolition: Show existing conditions of nearby construction and site improvements, that might be misconstrued as damage caused by building demolition operations. Submit before Work begins.
- E. Landfill Records: Indicate receipt and acceptance of hazardous waste by a landfill facility licensed to accept hazardous waste.

1.5 QUALITY ASSURANCE

- A. Demolition Firm Qualifications: An experienced firm that has specialized in demolition work similar in material and extent to that indicated for this Project.
- B. Regulatory Requirements: Comply with governing EPA and IDNR notification regulations before beginning demolition. Comply with hauling and disposal regulations of authorities having jurisdiction.
- C. Standards: Comply with ANSI A10.6 and NFPA 241.
- D. Predemolition Conference: Conduct conference at project site. Date to be determined.

1.6 PROJECT CONDITIONS

- A. Building to be demolished will be vacated and its use discontinued before start of Work.
- B. Conduct building demolition so any City Public Way operations will not be disrupted.
 - 1. Provide not less than 48 hours' notice to Owner of activities that will affect City operations.
 - 2. Maintain access to existing walkways, exits, and other adjacent occupied or used facilities.
 - a. Do not close or obstruct walkways, exits, or other occupied or used facilities without written permission from authorities having jurisdiction.
- C. Owner assumes no responsibility for buildings and structures to be demolished.
 - 1. Conditions existing at time of inspection for bidding purpose will be maintained by Owner as far as practical.
- D. Hazardous Materials: It is expected that hazardous materials will be encountered in the Work.
 - 1. Hazardous materials will be removed by Contractor as part of the Work.
- E. Storage or sale of removed items or materials on-site is not permitted.

1.7 COORDINATION

- A. Arrange demolition schedule so as not to interfere with City and adjacent property owners.

PART 2 - PRODUCTS [(Not Used)]

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Survey existing conditions and correlate with requirements indicated to determine extent of building demolition required.
- B. When unanticipated mechanical, electrical, or structural elements are encountered, investigate and measure the nature and extent of the element. Promptly submit a written report to Engineer.

3.2 PREPARATION

- A. Refrigerant: Remove and store refrigerant according to 40 CFR 82 and regulations of authorities having jurisdiction.
- B. Existing Utilities: Locate, identify, disconnect, and seal or cap off indicated utilities serving buildings and structures to be demolished.
 - 1. Arrange to shut off indicated utilities with utility companies.
 - 2. If utility services are required to be removed, relocated, or abandoned, before proceeding with building demolition provide temporary utilities that bypass buildings and structures to be demolished and that maintain continuity of service to other buildings and structures.
 - 3. Cut off pipe or conduit a minimum of 24" below grade. Cap, valve, or plug and seal remaining portion of pipe or conduit after bypassing.
- C. Existing Utilities: Contact utility vendor for instructions before removing.
- D. Removed and Salvaged Items: All salvaged items are contractors property.

3.3 PROTECTION

- A. Existing Facilities: Protect adjacent walkways, loading docks, building entries, and other building facilities during demolition operations.
- B. Temporary Protection: Erect temporary protection, such as walks, fences, railings, canopies, and covered passageways, where required by authorities having jurisdiction and as indicated.
 - 1. Protect existing site improvements, appurtenances, and landscaping to remain.
 - 2. Provide temporary barricades and other protection required to prevent injury to people and damage to adjacent buildings and facilities to remain.
 - 3. Provide protection to ensure safe passage of people around building demolition area and to and from occupied portions of adjacent buildings and structures.
 - 4. Protect walls, windows, roofs, and other adjacent exterior construction that are to remain and that are exposed to building demolition operations.

3.4 DEMOLITION, GENERAL

- A. General: Demolish indicated existing building completely. Use methods required to complete the Work within limitations of governing regulations and as follows:
 - 1. Do not use cutting torches until work area is cleared of flammable materials. Maintain portable fire-suppression devices during flame-cutting operations.
 - 2. Maintain adequate ventilation when using cutting torches.
 - 3. Locate building demolition equipment and remove debris and materials so as not to impose excessive loads on supporting walls, floors, or framing.
- B. Engineering Surveys: Perform surveys as the Work progresses to detect hazards that may result from building demolition activities.
- C. Site Access and Temporary Controls: Conduct building demolition and debris-removal operations to ensure minimum interference with roads, streets, walks, walkways, and other adjacent occupied and used facilities.
 - 1. Do not close or obstruct streets, walks, walkways, or other adjacent occupied or used facilities without permission from Owner and authorities having jurisdiction. Provide alternate routes around closed or obstructed traffic ways if required by authorities having jurisdiction.
 - 2. Use water mist and other suitable methods to limit spread of dust and dirt. Comply with governing environmental-protection regulations. Do not use water when it may damage adjacent construction or create hazardous or objectionable conditions, such as ice, flooding, and pollution.

3.5 MECHANICAL DEMOLITION

- A. Proceed with demolition of structural framing members systematically, from higher to lower level. Complete building demolition operations above each floor or tier before disturbing supporting members on next lower level.
- B. Remove debris from elevated portions by chute, hoist, or other device that will convey debris to grade level in a controlled descent.
 - 1. Remove structural framing members and lower to ground by method suitable to minimize ground impact or dust generation.
- C. Concrete Slabs-on-Grade: Saw-cut perimeter of area to be demolished at junctures with construction indicated to remain, then break up and remove.
- D. Existing Utilities: Demolish and remove existing utilities and below-grade utility structures.

3.6 EXPLOSIVE DEMOLITION

- A. Explosives: Use of explosives is not permitted.

3.7 SITE RESTORATION

- A. Below-Grade Areas: Completely fill below-grade areas and voids resulting from building demolition operations with satisfactory soil materials according to backfill requirements.
- B. Site Grading: Uniformly rough grade area of demolished construction to a smooth surface, free from irregular surface changes. Provide a smooth transition between adjacent existing grades and new grades.

3.8 REPAIRS

- A. General: Promptly repair damage to adjacent construction caused by building demolition operations.
- B. Where repairs to existing surfaces are required, patch to produce surfaces suitable for new materials.
- C. Restore exposed finishes of patched areas and extend restoration into adjoining construction in a manner that eliminates evidence of patching and refinishing.

3.9 RECYCLING DEMOLISHED MATERIALS (NOT USED)

3.10 DISPOSAL OF DEMOLISHED MATERIALS

- A. General: Remove demolished materials from Project site and legally dispose of them in an EPA-approved landfill.
 - 1. Do not allow demolished materials to accumulate on-site.
 - 2. Remove and transport debris in a manner that will prevent spillage on adjacent surfaces and areas.
- B. Burning: Do not burn demolished materials.
- C. Disposal: Transport demolished materials off Owner's property and legally dispose of them.

3.11 CLEANING

- A. Clean adjacent structures and improvements of dust, dirt, and debris caused by building demolition operations. Return adjacent areas to condition existing before building demolition operations began.

END OF SECTION 02221