

**CITY OF CIRCLE PINES, MINNESOTA  
REGULAR CITY COUNCIL MEETING  
Circle Pines City Hall**

**May 12, 2026  
7:00 P.M.**

**AGENDA**

**1. Call to Order**

**2. Roll Call**

*Matt Percy, Mayor*  
*Steve McChesney, Council Member*  
*Nici Dorner, Council Member*  
*Meagan Bachmayer, Council Member*  
*Angela Christen, Council Member*  
*Patrick Antonen, City Administrator*

**3. Setting of Agenda**

**Note:** Consent Agenda items will be acted on with one motion unless a council member requests their placement on the regular agenda.

**4. COMMENTS**

- a. Taxpayer Comments
- b. Council Member Comments
- c. Mayor's Comments

**5. COMMITTEE REPORTS**

- a. Park Board
- b. Police Governing Board

**6. COUNCIL BUSINESS**

**a. Consent Agenda**

<u>Items</u>	<u>Action</u>
1. Minutes – April 28, 2026 (Enclosed)	Approve
2. General Disbursements (Enclosed)	Approve
3. Police Disbursements (Enclosed)	Approve
4. Fire Disbursements (Enclosed)	Approve
5. Licenses (Enclosed)	Approve

Council Action \_\_\_\_\_

**b.** 2026 Seal Coating – Project Manual (Enclosed)

Council Action \_\_\_\_\_

**c.**

Council Action \_\_\_\_\_

**7. ADJOURNMENT**

**CITY OF CIRCLE PINES, MINNESOTA  
REGULAR CITY COUNCIL MEETING**

**Tuesday, April 28, 2026  
Minutes**

**1. CALL TO ORDER**

Mayor Percy called the meeting to order at 7:00 p.m.

**2. ROLL CALL**

Council Members Dorner, Bachmayer, and Christen were also present. City Administrator Antonen represented the staff. Member McChesney was absent.

**3. SETTING OF AGENDA**

Addition of Agenda Item 5.d. North Metro Telecommunication Commission Report

**4. COMMENTS**

**a. Taxpayer Comments**

There were no taxpayer comments.

**b. Council Member Comments**

Council Member Bachmayer commented that she and a neighbor started a volunteer group, Circle Pines Conservation Corps, which focuses on tackling the problem with invasive buckthorn in the community.

**c. Mayor’s Comments**

Mayor Percy commented on the following:

- The city had a successful Spring Recycling/Cleanup Day on April 18<sup>th</sup>, from 8 am until noon, and attended the Rotary’s Annual Scholarship Fundraiser that evening in Hugo.
- Good luck to the Centennial Robotics Team who will be attending the World Championship in Texas this week.

**5. COMMITTEE REPORTS**

**a. Fire Steering Committee**

Council Member Bachmayer reported that the committee met Thursday, April 16<sup>th</sup>, when the 2025 Audit Presentation was given, noting that next year will be the last audit for Centennial Fire District, and received an update of calls for the first quarter.

## **b. Anoka County Fire Protection Council**

Mayor Percy reported that the council met last Thursday, and the main order of business was to approve the budget for the next year.

- The overall budget went up from the projected \$533,000 to \$578,000, mainly due to increased expenses from the contract for the public safety data system, and there were some additional minor changes to the budget, which was approved with about 85% of the elected officials that voted in its favor.
- Chief Retka gave an update on the progress of the relationship between SBM and neighbor Lexington.

## **c. Utilities Commission**

City Administrator Antonen reported that the commission met at City Hall today at 5 pm, and the meeting agenda included:

- Environmental Initiatives Presentation
- The pre-con meeting for the Water Tower Project was yesterday, and the project has officially started with plans to have it complete by mid-summer and a set end date of September. Residents might notice a difference in the water once the city switches over to Blaine's water on Thursday.

## **d. North Metro Telecommunications Commission**

Member Bachmayer reported that the commission met for a special meeting on April 15<sup>th</sup>, to discuss strategic planning and set priorities for the commission moving forward. More updates will come at the June meeting.

## **6. COUNCIL BUSINESS**

### **a. Consent Agenda Items:**

1. Minutes – April 14, 2026
2. General Fund Disbursements
3. Police Disbursements
4. Fire Disbursements
5. General Fund Q1 Financial Summary
6. Licenses

**Motion:** Dorner moved, seconded by Bachmayer, to approve the Consent Agenda as presented with noted change.

**Motion carried 4-0.**

### **b. SBM Fire Department Quarter 1 Update – Chief Retka**

Mayor Percy introduced Chief Dan Retka who will give a presentation on the Q1 update for the SBM Fire Department.

Chief Retka explained that the SBM Fire Departments currently serve a population of 106,000+ and continue to deliver a high level of service at one of the lowest costs in the county.

### **2026 1<sup>st</sup> Quarter Update**

- Calls for Service: **874 calls**
- Call Response Time Averages:
  - Total Response Time District Wide: 4:47 (*5:29 in 2025*)
    - Emergent Priority Call Response Time: 1:09 First Truck on Scene
  - Total Turnout Time: 2:10 (*2:34 in 2025*)
    - Non-Emergent Time: 2:11 and 5:58 (*2:31 and 6:15 in 2025*)
    - Without City Responders: 1:58 and 3:42
- Fire Corps: 28 volunteers, number of hours volunteered, different team departments, and activities/events
- Rehab Team: Response Statistics - total calls, longest call, total hours on scene, and areas impacted
- Staffing & Coverage Improvements: Three Stations Staffed 24/7
  - Spring Lake Park, Blaine, and Circle Pines
- Training & Professional Development - SBM Leads:
  - Anoka County Fire Training Academy
  - EMS training for county and beyond
  - Ramsey County Fire Academy
- Regional Leadership & Growth
- Financial Performance
- Operational Efficiency
- Fleet & Capital Strategy
- Future Planning

### **c. Environmental Initiatives Presentation**

Mayor Percy explained that next up is the Environmental Initiatives presentation.

Antonen explained that this is the annual Environmental Initiatives presentation that coincides with Earth Day, which was April 22<sup>nd</sup>.

Environmental Initiatives Presentation:

- EV Charging Station
  - The MPCA VW Settlement Grant was awarded.
    - Purchased and installed 2 Blink 7 chargers: Dual-port chargers allow up to 4 EVs to charge at the same time, and a maintenance contract with Blink to ensure the chargers remain working.
    - Ribbon cutting ceremony will take place this summer.
- MPCA Local Climate Action Plan Grant
  - In 2023, the Minnesota Legislature set aside funds for local climate action grants to help local governments.
    - A local government is developing a community-wide plan for climate adaptation and resilience.

- This is probably a requirement as part of the 2050 Comp Plan
- The city applied for a local climate action plan grant through the MPCA
  - We applied for \$51,393, of which \$2,450 was our local match and \$48,943 from the MPCA.
- The city was successful and received \$49,000 for the Local Climate Action Plan Grant.
  - Environmental Stewardship Plan will be completed by this summer.
  - Advisory committee has met multiple times over the year and held a very well-attended community event last November featuring the Raptor Center.
  - Next steps will be to implement the Environmental Stewardship Plan.
- Participation in Environmental Organization:
  - Green Steps – Step 2
  - Adopt-a-drain – 53 Drains Adopted
- Organics Recycling
  - This project started in 2022 with curbside organics recycling
  - About 100 subscribers per month
- Met Council – Water Efficiency Grant
  - Applied for the 2026 Water Efficiency Grant. Waiting to hear if approved.
  - Eligible replacement items this year has expanded:
    - Washing Machine – up to \$200 rebate
    - Dishwater – up to \$100 rebate
    - Toilet – up to \$100 rebate
    - Smart irrigation controller – up to \$100 rebate
    - Irrigation Audit – up to \$200 rebate
  - Requested Grant Amount = \$13,200
  - Required Municipality Match = \$3,300
  - Total Program Budget = \$16,500

## 7. ADJOURN TO WORKSESSION

**Motion:** Christen moved, seconded by Bachmayer, to adjourn the meeting to a work session at 7:55 p.m.

**Motion carried 4-0.**

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**Mayor**

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**City Administrator**

**2026 License for Approval**

*All licenses on this list have insurance, bond & worker's comp if applicable, and have paid fee.*

**Date for Council Approval: 05/12/2026**

	<b><u>Company</u></b>	<b><u>License type</u></b>
1	Nate's Fence and Gate LLC	CONT-FENCE
2	The Asphalt Company, Inc.	ASPHALT
3		
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17		



CIRCLE PINES

200 Civic Heights Circle  
Circle Pines, MN 55014  
(763) 784-5898

[www.ci.circle-pines.mn.us](http://www.ci.circle-pines.mn.us)

**Agenda Item 7.a.**

# Memo

To: City Council Members  
From: Patrick Antonen  
Date: May 7, 2026  
Re: 2026 Sealcoating Project

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The City's annual sealcoating program will transition in 2026 from the previous Joint Powers Agreement (JPA) with the City of Coon Rapids to an independently managed project. The JPA concluded in 2025, requiring the City to establish a new delivery approach for pavement maintenance activities.

To assist with this transition, the city engineer, WSB, has provided engineering and project administration support, including bid preparation, contractor coordination, and construction observation.

Although the administrative structure has changed, the City's pavement preservation goals remain the same. Sealcoating is a cost-effective maintenance practice that helps extend pavement life and reduce long-term street repair costs.

The 2026 project will include selected residential streets identified through the City's pavement management process. Staff recommends proceeding with the project as part of the City's ongoing street maintenance program.



# PROJECT MANUAL

## 2026 PAVEMENT MAINTENANCE PROJECT

CITY OF CIRCLE PINES | ANOKA COUNTY | MINNESOTA

May 12, 2026

Prepared for:  
City of Circle Pines  
200 Civic Heights Circle  
Circle Pines, MN 55014

WSB PROJECT NO. 030969-000



**PROJECT MANUAL**

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**2026 PAVEMENT MAINTENANCE PROJECT**

**FOR THE CITY OF CIRCLE PINES  
ANOKA COUNTY, MINNESOTA**

**MAY 12, 2026**

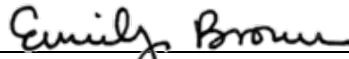
**Prepared By:**



# CERTIFICATION

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I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly licensed professional engineer under the laws of the State of Minnesota.

  
Emily A. Brown, PE

Date: May 12, 2026

Lic. No. 51773

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# INSTRUCTIONS TO BIDDERS – FOR QUOTES

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## INTRODUCTION

This project is being issued as a quote package. The term “Bid” will continue to be used in this quote package, as defined in Paragraph 1.01.A. of the Standard General Conditions of the Construction Contract, EJCDC C-700 (2018 Edition).

These Instructions to Bidders amend or supplement the Definitions and Terms, the Bidding Requirements and Conditions, and the Bidding Requirements and Covenants contained in Division I of the Minnesota Department of Transportation (MnDOT) Standard Specifications for Construction (2025 Edition). Unless specifically stated, provisions of MnDOT Division I included in the sections above which are not amended or supplemented **shall not** apply to this Contract.

### 1. (1101) WORDING OF SPECIFICATIONS

The provisions of MnDOT 1101 shall apply.

### 2. (1102) ABBREVIATIONS AND MEASUREMENT UNITS

The provisions of MnDOT 1102 shall apply.

### 3. (1103) DEFINITIONS

The definitions in MnDOT 1103 are modified and/or supplemented as follows:

**Department.** The Department shall mean the City of Circle Pines.

**Plans.** The **Plans** shall also mean the **Drawings**, as defined in Paragraph 1.01 of the General Conditions.

**Project.** The **Project**, as defined in Paragraph 1.01 of the General Conditions.

**Proposal.** The **Bid**, as defined in Paragraph 1.01 of the General Conditions.

**Proposal Package.** The **Bidding Documents**, as defined in Paragraph 1.01 of the General Conditions.

### 4. QUALIFICATIONS OF BIDDERS

A Bidder’s failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.

No requirement to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder’s qualifications.

#### 4.1 RESPONSIBLE/RESPONSIVE BID

A “responsible” Bid is a Bid from a Bidder that has:

- a. Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;
- b. Resources to meet the completion schedule contained in the Agreement; and
- c. A satisfactory performance record for completion of other projects.

A “responsive” Bid must include the following:

- a. Completed Bid Form;
- b. Non-Collusion Affidavit;
- c. Responsible Contractor Verification and Certification of Compliance Form;

#### **4.2 FURNISHING OF EVIDENCE OF RESPONSIBILITY**

When requested by the Owner, the Bidder shall furnish a balance sheet, certified by a certified public accountant as to a date not more than 60 Calendar days prior to the date of the opening of the Bids which shall set forth outstanding assets and liabilities in reasonable detail. The Bidder shall also furnish when requested, a list of work of a similar nature performed with dates of completion thereof. The Bidder shall also furnish any other additional information relative to financial responsibility and competence to do the work as may be requested by the Owner prior to the acceptance of any Bid.

#### **5. (1201) PREQUALIFICATION OF BIDDERS**

The provisions of MnDOT 1201 shall apply.

#### **6. (1202) CONTENTS OF PROPOSAL PACKAGE**

The provisions of MnDOT 1202 shall apply.

#### **7. (1203) ACCESS TO PROPOSAL PACKAGE**

MnDOT 1203 is deleted in its entirety and replaced with the following:

##### **1203 ACCESS TO PROPOSAL PACKAGE**

Bidder shall obtain a complete set of Bidding Requirements and proposed Contract Documents (together, the Bidding Documents). See the Agreement for a list of the Contract Documents. It is Bidder's responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers.

Bidding Documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download or distribution of the Bidding Documents does not confer a license or grant permission or authorization for any other use. Authorization to download documents, or other distribution, includes the right for plan holders to print documents solely for their use, and the use of their prospective Subcontractors and Suppliers, provided the plan holder pays all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.

Bidding Documents will be provided in Adobe PDF (Portable Document Format) (.pdf). It is the intent of the Engineer and Owner that such Electronic Documents are to be exactly representative of the paper copies of the documents. However, because the Owner and Engineer cannot totally control the transmission and receipt of Electronic Documents nor the Contractor's means of reproduction of such documents, the Owner and Engineer cannot and do not guarantee that Electronic Documents and reproductions prepared from those versions are identical in every manner to the paper copies.

Unless otherwise stated in the Bidding Documents, the Bidder may use and rely upon complete sets of Electronic Documents of the Bidding Documents described above. However, Bidder assumes all risks associated with differences arising from transmission/receipt of Electronic Documents versions of Bidding Documents and reproductions prepared from those versions and, further, assumes all risks, costs, and responsibility associated with use of the Electronic Documents versions to derive information that is not explicitly contained in printed paper versions of the documents, and for Bidder's reliance upon such derived information.

## **8. (1204) INTERPRETATION OF QUANTITIES IN BID SCHEDULE**

The provisions of MnDOT 1204 shall apply.

## **9. (1205) EXAMINATION OF PROPOSAL PACKAGE AND SITE OF WORK**

The provisions of MnDOT 1205 are modified and/or supplemented with the following:

### **1205.1 PROPOSAL PACKAGE AND SITE OF WORK**

Amend the first paragraph of MnDOT 1205.1 by adding the following immediately after the first sentence:

Each Bidder shall become familiar with and satisfy itself as to all laws and regulations that may affect cost, progress and performance of the work.

Add the following new paragraphs to MnDOT 1205.1:

The Project Site is identified in the Bidding Documents. The Site includes right-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

Review of the project site includes but is not limited to the structure of the ground, the existence of surface and ground water, the availability of drainage, and obstacles which may be encountered.

Review of haul routes includes but is not limited to means of approach to the site, manner of delivery and handing of materials, and transporting of equipment.

No plea of ignorance of conditions that exist or that may hereafter exist, or of difficulties that will be encountered in the execution of the work, which result from failure to make necessary examinations and investigations, will be accepted as a sufficient excuse for any failure or omission on the part of the Contractor to fulfill in every detail all the requirements of this Contract. Nor will they be accepted as a basis for any claim whatsoever for extra compensation or for an extension of time.

No Bidder may rely upon any statements or representations of any officer, agent or employee of the Owner as to the conditions of the work, the character of the soils, or other hazards which may be encountered during construction.

### **1205.2 ADDITIONAL INFORMATION**

Amend the third paragraph of MnDOT 1205.2 to read as follows:

If the Owner has taken test borings on the Project, the Owner may or may not include the test boring information on the Plans. If the Owner includes test boring information (on the Plans, in the form of boring logs, or otherwise), the Bidders shall understand the following with regard to the test boring information:

Add the following to new paragraphs to MnDOT 1205:

### **1205.3 BIDDER'S REPRESENTATIONS AND CERTIFICATIONS**

The Bid Form that each Bidder will submit contains express representations regarding the Bidder's examination of Project documentation, Site visit, and preparation of the Bid, and certifications regarding lack of collusion or fraud in connection with the Bid. Bidder should review

these representations and certifications and assure that Bidder can make the representations and certifications in good faith, before executing and submitting its Bid.

If Bidder is awarded the Contract, Bidder (as Contractor) will make similar express representations and certifications when it executes the Agreement.

## **10.(1206) PREPARATION AND DELIVERY OF PROPOSAL**

MnDOT 1206 is deleted in its entirety and replaced with the following:

### **1206 PREPARATION AND DELIVERY OF PROPOSAL**

#### **1206.1 BASIS OF BID**

Bidders must submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.

The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity", which Owner or its representative has set forth in the Bid Form, for the item and the corresponding "Bid Unit Price" offered by the Bidder. The Bid Unit Price shall be offered as a dollar value to two decimal places (\$XXX.XX). The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.

For cash allowances the Bid Price must include such amounts as the Bidder deems proper for Contractor's overhead, costs, profits, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 13.02.B of the General Conditions.

#### **1206.2 PREPARATION AND DELIVERY OF PROPOSALS**

##### **A. Preparation of Proposal**

Bidder shall prepare its Bid on a paper copy of the Bid Form printed from the Electronic Documents version of the Bidding Documents. The printed copy of the Bid Form must be clearly legible, printed on 8½ inch by 11-inch paper and as closely identical in appearance to the Electronic Document version of the Bid Form as may be practical. The Owner reserves the right to accept Bid Forms which nominally vary in appearance from the original paper version of the Bid Form, providing that all required information and submittals are included with the Bid.

All blanks on the Bid Form must be completed in ink and the Bid Form signed in ink. Erasures or alterations must be initialed in ink by the person signing the Bid Form. A Bid price must be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.

A Bid by a corporation must be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown.

A Bid by a partnership must be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership must be shown.

A Bid by a limited liability company must be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown.

A Bid by an individual must show the Bidder's name and official address.

A Bid by a joint venture must be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture must have been formally established prior to submittal of a Bid, and the official address of the joint venture must be shown.

All names must be printed in ink below the signatures.

The Bid must contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.

Postal and email addresses and telephone number for communications regarding the Bid must be shown.

The Bid must contain evidence of Bidder's authority to do business in the state where the Project is located, or Bidder must certify in writing that it will obtain such authority within the time for acceptance of Bids and attach such certification to the Bid.

If Bidder is required to be licensed to submit a Bid or perform the Work in the state where the Project is located, the Bid must contain evidence of Bidder's licensure, or Bidder must certify in writing that it will obtain such licensure within the time for acceptance of Bids and attach such certification to the Bid. Bidder's state contractor license number, if any, must also be shown on the Bid Form.

## **B. Delivery of Proposal**

A Bid must be received no later than the date and time prescribed and at the place indicated in the Advertisement or invitation to bid and must be enclosed in a plainly marked package with the Project title, the name and address of the Bidder, and must be accompanied by the other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid must be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid must be addressed to the location designated in the Advertisement.

Bids received after the date and time prescribed for opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

### **1206.3 RESPONSIBLE CONTRACTOR**

The successful Bidder must be a "Responsible Contractor" as defined in Minnesota Statutes, section 16C.285, subdivision 3.

A Bidder must verify it meets the minimum criteria detailed in the law by submitting the "Responsible Contractor Verification and Certification of Compliance" form. A company officer must sign the "Responsible Contractor Verification and Certification of Compliance" form under oath verifying compliance with each of the minimum criteria. The completed forms must be submitted with the Bid.

A Bidder must obtain a verification from each Subcontractor it will have a direct contractual relationship with. At the Owner's request, a Bidder must submit signed Subcontractor verifications. A Contractor or Subcontractor must obtain an annual verification from each motor carrier with which it has a direct contractual relationship with. A motor carrier must give immediate written notice if it no longer meets the minimum responsible Contractor criteria. The requirement for Subcontractor verifications does not apply to:

- Design professionals licensed under Minnesota Statutes, section 326.06; and

- A business or person that supplies Materials, Equipment, or supplies to a Subcontractor on the Project, including performing delivering and unloading services in connection with the supply of Materials, Equipment, and supplies. But, a business or person must submit a verification if it delivers mineral Aggregate such as sand, Gravel, or stone that will be incorporated into the Work by depositing the Material substantially in place, directly or through spreaders, from the transporting vehicle.

A Bidder or Subcontractor who does not meet the minimum criteria specified in the statute, or who fails to verify compliance with the criteria, is not a “Responsible Contractor” and is ineligible to be awarded the Contract for this Project or to work on this Project. Submitting a false verification makes the Bidder or Subcontractor ineligible to be awarded a construction Contract for this Project. Submitting a false statement may lead to statement may lead to Contract termination.

## **11. (1207) IRREGULAR PROPOSALS**

The provisions of MnDOT 1207 shall apply.

## **12. (1208) PROPOSAL GUARANTY**

MnDOT 1208 is deleted in its entirety.

## **13. CONTRACT TIMES**

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

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

## **14. (1210) REVISION OF PROPOSAL PACKAGE OR WITHDRAWAL OF PROPOSALS**

The provisions of MnDOT 1210 are modified and/or supplemented as follows:

Delete the first three paragraphs of MnDOT 1210 and replace with the following:

The Owner reserves the right to revise the Proposal Package at any time before the date and time for opening Bids. The Owner will issue a numbered and dated Addendum for any revision of the Proposal Package.

Delete the last paragraph of MnDOT 1210 and replace with the following:

The Bidder shall acknowledge receipt of each Addendum on the Bid Form.

Add the following new paragraphs to MnDOT 1210:

Bidder shall submit all questions about the meaning or intent of the Bidding Documents to Engineer in writing. Direct questions about this Project to Emily Brown at 612.849.6157 and ebrown@wsbeng.com.

Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all registered plan holders. Questions received less than seven days prior to the date for opening of Bids may not be answered.

Only responses set forth in an Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the Contract Documents unless set forth in an Addendum that expressly modifies or supplements the Contract Documents.

If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, the Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, the Bidder will be disqualified from further bidding on the Work.

## **15.(1211) CONDITIONAL PROPOSALS**

MnDOT 1211 is deleted in its entirety and replaced with the following:

### **1211 CONDITIONAL PROPOSALS**

The Bidder shall not stipulate in its Bid any conditions not provided for on the Bid Form.

## **16.(1212) OPENING OF PROPOSALS**

MnDOT 1212 is deleted in its entirety and replaced with the following:

### **1212 OPENING OF PROPOSALS**

Bids will be opened privately at the time and place indicated in the invitation to Bid.

## **17.(1213) DISQUALIFICATION OF BIDDERS**

The provisions of MnDOT 1213 are modified and/or supplemented with the following:

Modify the third item of the list in the first paragraph of MnDOT 1213 to read as follows:

- (3) The Bidder failed to perform on a previous Contract with the Owner

## **18.(1301) CONSIDERATION OF PROPOSALS**

The provisions of MnDOT 1301 are modified and/or supplemented with the following:

Add the following new paragraphs to MnDOT 1301:

Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible.

If Owner awards the contract for the Work, such award will be to the responsible Bidder submitting the lowest responsive Bid.

Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

In evaluating Bids, Owner will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.

In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers

proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

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

## **19.(1302) AWARD OF CONTRACT**

The provisions of MnDOT 1302 are modified and/or supplemented with the following:

Modify the first sentence of MnDOT 1302 to read as follows:

Within 60 Calendar Days after opening proposals, the Owner will Award the Contract to the lowest responsible Bidder provided that the lowest responsible Bidder complies with the Bidding Requirements.

Add the following new paragraphs to MnDOT 1302:

Owner reserves the right to delete any line item from the Bid prior to final Contract execution.

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

## **20.(1303) CANCELLATION OF AWARD**

The provisions of MnDOT 1303 shall apply.

## **21.(1304) RETURN OF PROPOSAL GUARANTY**

The provisions of MnDOT 1304 shall apply.

## **22.(1305) REQUIREMENT OF CONTRACT BOND**

The provisions of MnDOT 1305 are modified and/or supplemented with the following:

Add the following new paragraphs to MnDOT 1305:

Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to bonds and insurance. These requirements are in addition to the performance and payment bonds required by MINN. STAT. 574.26.

When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by required bonds and insurance documentation.

## **23.(1306) EXECUTION AND APPROVAL OF CONTRACT**

The provisions of MnDOT 1306 are modified and/or supplemented with the following:

Delete the first paragraph of MnDOT 1306 in its entirety and replace with the following:

When Owner issues a Notice of Award to the Successful Bidder, it will be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 Calendar Days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Agreement and any bonds and insurance documentation required by the Contract Documents to Owner. Within 10 Calendar Days thereafter, Owner will deliver one fully executed counterpart of the Agreement to Successful

Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

Modify the second paragraph of MnDOT 1306 to read as follows:

If the Contract specifies the Contract time as working days and the Successful Bidder fails to return the signed Contract documents within 15 Calendar Days, the Owner may reduce the Contract Time to reflect the delay caused by the Contractor.

Delete the last paragraph of MnDOT 1306 and replace with the following:

The Award is not binding and the Contract is not effective until both parties fully execute the Contract and the Owner approves the Contract, as required by law.

## **24. (1307) FAILURE TO EXECUTE CONTRACT**

The provisions of MnDOT 1307 shall apply.

## **25. SUBSTITUTE AND “OR EQUAL” ITEMS**

The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items.

All prices that Bidder sets forth in its Bid will be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

## **26. SURETY DEPOSITS**

All out-of-state contractors on construction work over \$100,000 will be required to file an exemption from Surety Deposit (Form SDE) prior to their first progress payment.

## **27. NONDISCRIMINATION IN EMPLOYMENT**

If awarded the Contract, the Bidder (as Contractor) agrees not to discriminate on account of race, creed or color as required by Minnesota Statutes, section 181.69 and Minnesota Statutes, chapter 363A.

Bidder:	
Address:	
City, State, Zip:	
Email Address:	Telephone No.:

**BID FORM  
2026 PAVEMENT MAINTENANCE PROJECT**

Opening Time: 2:00 p.m. local time

Opening Date: May 28, 2026

This Bid is submitted to:

City of Circle Pines  
200 Civic Heights Circle  
Circle Pines, MN 55014

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices in this Bid, within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
2. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.
3. In submitting this Bid, Bidder represents the following:
  - a. Bidder has examined and carefully studied the Bidding Documents, including Addenda.
  - b. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - c. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - d. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings; and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
  - e. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, if selected as Contractor; and (3) Bidder's (Contractor's) safety precautions and programs.
  - f. Based on the information and observations referred to in the preceding paragraph, Bidder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  - g. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
  - h. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
  - i. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
  - j. The submission of this Bid constitutes an incontrovertible representation by Bidder that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.
4. Bidder will perform the following Work at the indicated unit prices:

No.	Item No.	Item	Units	Quantity	Unit Price	Total Price
<b>BASE BID</b>						
1	2021.501	MOBILIZATION	LS	1	\$	\$
2	2331.608	ROUT & SEAL BITUMINOUS PAVEMENT CRACKS	LB	500	\$	\$
3	2355.506	BITUMINOUS MATERIAL FOR FOG SEAL	GAL	2900	\$	\$
4	2356.504	BITUMINOUS SEAL COAT	S Y	28200	\$	\$
5	2356.506	BITUMINOUS MATERIAL FOR SEAL COAT	GAL	8500	\$	\$
6	2563.601	TRAFFIC CONTROL	LS	1	\$	\$
7	2582.503	4" SOLID LINE PAINT	L F	1871	\$	\$
8	2582.503	12" SOLID LINE PAINT	L F	33	\$	\$
9	2582.503	4" DBLE SOLID LINE PAINT	L F	175	\$	\$
10	2582.518	PAVT MSSG PAINT	SF	121	\$	\$
11	2582.518	CROSSWALK PAINT	SF	231	\$	\$
<b>BASE BID TOTAL</b>						\$

5. Bidder acknowledges that: (a) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (b) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Work will be based on actual quantities, determined as provided in the Contract Documents.
6. Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
7. Bidder accepts the provisions of the Agreement as to liquidated damages.
8. Bidder hereby acknowledges receipt of the following Addenda:

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_ Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_ Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

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

- a. Non-Collusion Affidavit;
- b. Responsible Contractor Verification and Certification of Compliance;

BIDDER: *[Indicate correct name of bidding entity]*

By: \_\_\_\_\_  
*[Signature]*

\_\_\_\_\_   
*[Printed name]*

Title: \_\_\_\_\_

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

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

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

Attest: \_\_\_\_\_  
*[Signature]*

\_\_\_\_\_   
*[Printed name]*

Title: \_\_\_\_\_

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

Federal Employer ID Number (EIN): \_\_\_\_\_

**NON-COLLUSION AFFIDAVIT**

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The following Non-Collusion Affidavit shall be executed by the bidder:

**State Project No.** \_\_\_\_\_ N/A \_\_\_\_\_

**Federal Project No.** \_\_\_\_\_ N/A \_\_\_\_\_

**State of Minnesota** \_\_\_\_\_ )

) ss

**County of** \_\_\_\_\_ A \_\_\_\_\_ )

I, \_\_\_\_\_, do state under penalty of  
(name of person signing this affidavit)

perjury under 28 U.S.C. 1746 of the laws of the United States:

(1) that I am the authorized representative of \_\_\_\_\_

\_\_\_\_\_  
(name of person, partnership or corporation submitting this proposal)

and that I have the authority to make this affidavit for and on behalf of said bidder;

(2) that, in connection with this proposal, the said bidder has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding;

(3) that, to the best of my knowledge and belief, the contents of this proposal have not been communicated by the bidder or by any of his/her employees or agents to any person who is not an employee or agent of the bidder or of the surety on any bond furnished with the proposal and will not be communicated to any person who is not an employee or agent of the bidder or of said surety prior to the official opening of the proposal; and

(4) that I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Signed: \_\_\_\_\_  
(bidder or his/her authorized representative)

**ATTACHMENT A  
PRIME CONTRACTOR RESPONSE**

**RESPONSIBLE CONTRACTOR VERIFICATION AND CERTIFICATION OF COMPLIANCE**

**STATE PROJECT NUMBER:** \_\_\_\_\_

**This form includes changes by statutory references from the Laws of Minnesota 2015, chapter 64, sections 1-9. This form must be submitted with the response to this solicitation. A response received without this form, will be rejected.**

<p>Minn. Stat. § 16C.285, Subd. 7. <b>IMPLEMENTATION.</b> ... any prime contractor or subcontractor or motor carrier that does not meet the minimum criteria in subdivision 3 or fails to verify that it meets those criteria is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project...</p>	
<p>Minn. Stat. § 16C.285, Subd. 3. <b>RESPONSIBLE CONTRACTOR, MINIMUM CRITERIA.</b> "Responsible contractor" means a contractor that conforms to the responsibility requirements in the solicitation document for its portion of the work on the project and verifies that it meets the following minimum criteria:</p>	
<p>(1)</p>	<p>The Contractor:</p> <ul style="list-style-type: none"> <li>(i) is in compliance with workers' compensation and unemployment insurance requirements;</li> <li>(ii) is in compliance with Department of Revenue and Department of Employment and Economic Development registration requirements if it has employees;</li> <li>(iii) has a valid federal tax identification number or a valid Social Security number if an individual; and</li> <li>(iv) has filed a certificate of authority to transact business in Minnesota with the Secretary of State if a foreign corporation or cooperative.</li> </ul>
<p>(2)</p>	<p>The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 177.24, 177.25, 177.41 to 177.44, 181.03, 181.101, 181.13, 181.14, or 181.722, and has not violated United States Code, title 29, sections 201 to 219, or United States Code, title 40, sections 3141 to 3148. For purposes of this clause, a violation occurs when a contractor or related entity:</p> <ul style="list-style-type: none"> <li>(i) repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of \$25,000 or more within the three-year period, provided that a failure to pay is "repeated" only if it involves two or more separate and distinct occurrences of underpayment during the three-year period;</li> <li>(ii) has been issued an order to comply by the commissioner of Labor and Industry that has become final;</li> <li>(iii) has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;</li> <li>(iv) has been found by the commissioner of Labor and Industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to section 177.27;</li> <li>(v) has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Review Board; or</li> <li>(vi) has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in an action brought in a court having jurisdiction. Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties;*</li> </ul>

(3)	The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 181.723 or chapter 326B. For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order;*
(4)	The contractor or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under section 363A.36 revoked or suspended based on the provisions of section 363A.36, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office;*
(5)	The contractor or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification;*
	* Any violations, suspensions, revocations, or sanctions, as defined in clauses (2) to (5), occurring prior to July 1, 2014, shall not be considered in determining whether a contractor or related entity meets the minimum criteria.
(6)	The contractor or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions that have authority to debar a contractor; and
(7)	All subcontractors and motor carriers that the contractor intends to use to perform project work have verified to the contractor through a signed statement under oath by an owner or officer that they meet the minimum criteria listed in clauses (1) to (6).

Minn. Stat. § 16C.285, Subd. 5. **SUBCONTRACTOR VERIFICATION.**

A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project. Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with subdivision 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor.

If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors.

A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause (7). A prime contractor and subcontractors shall not be responsible for the false statements of any subcontractor with which they do not have a direct contractual relationship. A prime contractor and subcontractors shall be responsible for false statements by their first-tier subcontractors with which they have a direct contractual relationship only if they accept the verification of compliance with actual knowledge that it contains a false statement.

Subd. 5a. **Motor carrier verification.** A prime contractor or subcontractor shall obtain annually from all motor carriers with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each motor carrier. A prime contractor or subcontractor shall require each such motor carrier to provide it with immediate written notification in the event that the motor carrier no longer meets one or more of the minimum criteria in subdivision 3 after submitting its annual verification. A motor carrier shall be ineligible to perform work on a project covered by this section if it does not meet all the minimum criteria in subdivision 3. Upon request, a prime contractor or subcontractor shall submit to the contracting authority the signed verifications of compliance from all motor carriers providing for-hire transportation of materials, equipment, or supplies for a project.

Minn. Stat. § 16C.285, Subd. 4. **VERIFICATION OF COMPLIANCE.**

A contractor responding to a solicitation document of a contracting authority shall submit to the contracting authority a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria in subdivision 3, with the exception of clause (7), at the time that it responds to the solicitation document.

A contracting authority may accept a signed statement under oath as sufficient to demonstrate that a contractor is a responsible contractor and shall not be held liable for awarding a contract in reasonable reliance on that statement. A prime contractor, subcontractor, or motor carrier that fails to verify compliance with any one of the required minimum criteria or makes a false statement under oath in a verification of compliance shall be ineligible to be awarded a construction contract on the project for which the verification was submitted.

A false statement under oath verifying compliance with any of the minimum criteria may result in termination of a construction contract that has already been awarded to a prime contractor or subcontractor or motor carrier that submits a false statement. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria. A verification of compliance need not be notarized. An electronic verification of compliance made and submitted as part of an electronic bid shall be an acceptable verification of compliance under this section provided that it contains an electronic signature as defined in section 325L.02, paragraph (h).

**CERTIFICATION**

**By signing this document I certify that I am an owner or officer of the company, and I certify under oath that:**

- 1) My company meets each of the Minimum Criteria to be a responsible contractor as defined herein and is in compliance with Minn. Stat. § 16C.285, and**
- 2) if my company is awarded a contract, I will submit Attachment A-1 prior to contract execution, and**
- 3) if my company is awarded a contract, I will also submit Attachment A-2 as required.**

**Authorized Signature of Owner or Officer:**

**Printed Name:**

**Title:**

**Date:**

**Company Name:**

NOTE: Minn. Stat. § 16C.285, Subd. 2, (c) If only one prime contractor responds to a solicitation document, a contracting authority may award a construction contract to the responding prime contractor even if the minimum criteria in subdivision 3 are not met.

**ATTACHMENT A-1**

**FIRST-TIER SUBCONTRACTORS LIST**

**SUBMIT PRIOR TO EXECUTION OF A CONSTRUCTION CONTRACT**

**STATE PROJECT NUMBER:** \_\_\_\_\_

Minn. Stat. § 16C.285, Subd. 5. A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project. Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with subdivision 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor.

<b>FIRST TIER SUBCONTRACTOR NAMES* (Legal name of company as registered with the Secretary of State)</b>	<b>Name of city where company home office is located</b>

\*Attach additional sheets as needed for submission of all first-tier subcontractors.

<b>SUPPLEMENTAL CERTIFICATION FOR ATTACHMENT A-1</b>	
<p><b>By signing this document I certify that I am an owner or officer of the company, and I certify under oath that:</b></p> <p><b>All first-tier subcontractors listed on attachment A-1 have verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in Minn. Stat. § 16C.285.</b></p>	
<b>Authorized Signature of Owner or Officer:</b>	<b>Printed Name:</b>
<b>Title:</b>	<b>Date:</b>
<b>Company Name:</b>	

**ATTACHMENT A-2**

**ADDITIONAL SUBCONTRACTORS LIST**

**PRIME CONTRACTOR TO SUBMIT AS SUBCONTRACTORS ARE ADDED TO THE PROJECT**

**STATE PROJECT NUMBER:** \_\_\_\_\_

This form must be submitted to the Project Manager or individual as identified in the solicitation document.

Minn. Stat. § 16C.285, Subd. 5. ... If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors. ...

<b>ADDITIONAL SUBCONTRACTOR NAMES* (Legal name of company as registered with the Secretary of State)</b>	<b>Name of city where company home office is located</b>

\*Attach additional sheets as needed for submission of all additional subcontractors.

<b>SUPPLEMENTAL CERTIFICATION FOR ATTACHMENT A-2</b>	
<p><b>By signing this document I certify that I am an owner or officer of the company, and I certify under oath that:</b></p> <p><b>All additional subcontractors listed on Attachment A-2 have verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in Minn. Stat. § 16C.285.</b></p>	
<b>Authorized Signature of Owner or Officer:</b>	<b>Printed Name:</b>
<b>Title:</b>	<b>Date:</b>
<b>Company Name:</b>	

## PERFORMANCE BOND

<p><b>Contractor</b></p> <p>Name: <b>[Full formal name of Contractor]</b></p> <p>Address <i>(principal place of business)</i>:  <b>[Address of Contractor's principal place of business]</b></p>	<p><b>Surety</b></p> <p>Name: <b>[Full formal name of Surety]</b></p> <p>Address <i>(principal place of business)</i>:  <b>[Address of Surety's principal place of business]</b></p>
<p><b>Owner</b></p> <p>Name: <b>[Full formal name of Owner]</b></p> <p>Mailing address <i>(principal place of business)</i>:  <b>[Address of Owner's principal place of business]</b></p>	<p><b>Contract</b></p> <p>Description <i>(name and location)</i>:  <b>[Owner's project/contract name, and location of the project]</b></p> <p>Contract Price: <b>[Amount from Contract]</b></p> <p>Effective Date of Contract: <b>[Date from Contract]</b></p>
<p><b>Bond</b></p> <p>Bond Amount: <b>[Amount]</b></p> <p>Date of Bond: <b>[Date]</b></p> <p><i>(Date of Bond cannot be earlier than Effective Date of Contract)</i></p> <p>Modifications to this Bond form:  <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16</p>	
<p>Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.</p>	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i></p>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
  - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
  - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
  - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
  - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

- 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
  - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
  - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
  - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
- 12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such

statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

- 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
  - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
  - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
  - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
  - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows: **[Describe modification or enter “None”]**

## PAYMENT BOND

<p><b>Contractor</b></p> <p>Name: <b>[Full formal name of Contractor]</b></p> <p>Address (<i>principal place of business</i>):  <b>[Address of Contractor's principal place of business]</b></p>	<p><b>Surety</b></p> <p>Name: <b>[Full formal name of Surety]</b></p> <p>Address (<i>principal place of business</i>):  <b>[Address of Surety's principal place of business]</b></p>
<p><b>Owner</b></p> <p>Name: <b>[Full formal name of Owner]</b></p> <p>Mailing address (<i>principal place of business</i>):  <b>[Address of Owner's principal place of business]</b></p>	<p><b>Contract</b></p> <p>Description (<i>name and location</i>):  <b>[Owner's project/contract name, and location of the project]</b></p> <p>Contract Price: <b>[Amount, from Contract]</b></p> <p>Effective Date of Contract: <b>[Date, from Contract]</b></p>
<p><b>Bond</b></p> <p>Bond Amount: <b>[Amount]</b></p> <p>Date of Bond: <b>[Date]</b></p> <p><i>(Date of Bond cannot be earlier than Effective Date of Contract)</i></p> <p>Modifications to this Bond form:  <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 18</p>	
<p>Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.</p>	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i></p>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
  - 5.1. Claimants who do not have a direct contract with the Contractor
    - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2. Pay or arrange for payment of any undisputed amounts.
  - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
  - 16.1. *Claim*—A written statement by the Claimant including at a minimum:
    - 16.1.1. The name of the Claimant;
    - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
    - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
    - 16.1.4. A brief description of the labor, materials, or equipment furnished;

- 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
  - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
  - 16.1.7. The total amount of previous payments received by the Claimant; and
  - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of “labor, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
18. Modifications to this Bond are as follows: **[Describe modification or enter “None”]**

# Contractor Affidavit

This Contractor Affidavit must be certified by the Minnesota Department of Revenue before the state of Minnesota or any of its subdivisions can make final payment to contractors. For more detailed information, see the instructions on the back of this form.

Please type or print clearly. This information will be used for returning the completed form.

Company name			Daytime phone	Minnesota tax ID number
Address			Total contract amount	Month/year work began
City	State	ZIP code	\$	Month/year work ended
			Amount still due	
			\$	

Project number	Project location			
Project owner	Address	City	State	ZIP code

Did you have employees work on this project?  Yes  No. If no, who did the work?

Check the box that describes your involvement in the project and fill in all information requested.

**Sole contractor**

**Subcontractor**

Name of contractor who hired you

Address

**Prime contractor**—If you subcontracted out any work on this project, all of your subcontractors must submit their own Contractor Affidavits and have them certified by the Department of Revenue *before* you can submit your Contractor Affidavit. For each subcontractor you had, fill in the information below and attach a copy of each subcontractor’s certified Contractor Affidavit. If you need more space, attach a separate sheet.

Business name	Address	Owner/Officer

I declare that all information I have filled in on this form is true and complete to the best of my knowledge and belief. I authorize the Department of Revenue to disclose pertinent information relating to this project, including sending copies of this form, to the prime contractor if I am a subcontractor, and to any subcontractors if I am a prime contractor, and to the contracting agency.

Contractor’s signature	Title	Date
------------------------	-------	------

**Mail to:** Minnesota Revenue, Mail Station 6610, St. Paul, MN 55146-6610  
**Phone:** 651-282-9999 or 1-800-657-3594

## Certificate of Compliance

Based on records of the Minnesota Department of Revenue, I certify that the contractor who has signed this Contractor Affidavit has fulfilled all the requirements of Minnesota Statutes 290.92 and 270C.66 concerning the withholding of Minnesota income tax from wages paid to employees relating to contract services with the state of Minnesota and/or its subdivisions.

Department of Revenue approval

Date

## Form IC134 Instructions

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### Contractor Affidavit

No state agency or local unit of government can make final payment to a contractor until the Department of Revenue has certified that the contractor and any subcontractor have fulfilled the requirements of Minnesota withholding tax laws.

If you are a prime contractor, a contractor or a subcontractor who did work on a project for the state of Minnesota or any of its local government subdivisions — such as a county, city or school district — you must submit a Contractor Affidavit to the Department of Revenue to receive a certificate of compliance.

### Use of Information

The Department of Revenue needs **all** the requested information to determine if you have met the state income tax withholding requirements. If all required information is not provided, Form IC134 will be returned to you for completion.

All information on this Contractor Affidavit is private by state law. It cannot be given to others without your permission, except to the Internal Revenue Service, other states that guarantee the same privacy and certain government agencies as provided by law.

### Minnesota Tax ID Number

You must have a Minnesota tax ID number if you have employees who work in Minnesota. You must enter your Minnesota tax ID number on Form IC134.

If you don't have a Minnesota tax ID number, apply online at [www.revenue.state.mn.us](http://www.revenue.state.mn.us) or by calling our Business Registration Office at 651-282-5225 or 1-800-657-3605.

If you have no employees and did all the work yourself, you do not need a Minnesota tax ID number. Instead, enter your Social Security number in the space for Minnesota tax ID number and explain who did the work.

### Submit Contractor Affidavit

Form IC134 cannot be processed by the Department of Revenue until you finish the work. If you submit the form before the project is completed, it will be returned to you unprocessed.

If any withholding payments are due to the state, Minnesota law requires certified payments before we approve your Form IC134.

If you are a subcontractor or sole contractor, submit the form when you have completed your part of the project.

If you are a prime contractor, submit the form when the entire project is completed and you have received certified Contractor Affidavits from all of your subcontractors.

### If you're a prime contractor and a subcontractor on the same project

If you were hired as a subcontractor to do work on a project, and you subcontracted all or a part of your portion of the project to another contractor, you are a prime contractor as well. Complete both the subcontractor and prime contractor areas on a single Form IC134.

You may submit your Contractor Affidavit either electronically **or** by mail. This affidavit must be certified and returned before the state or any of its subdivisions can make final payment for your work.

**For an immediate response:** Complete and submit your Contractor Affidavit electronically. Go to [www.revenue.state.mn.us](http://www.revenue.state.mn.us) and choose **Withholding Tax**. Under the File and Pay tab, click on Contractor Affidavit Information for Government Projects.

**You may complete and mail Form IC134 to:** Minnesota Revenue, Mail Station 6610, St. Paul, MN, 55146-6610. If you have fulfilled the requirements of Minnesota withholding tax laws, the department will sign your Form IC134 and return it to you.

To receive your final payment, submit the certified Contractor Affidavit to the government unit for which the work was done. If you are a subcontractor, submit the certified Contractor Affidavit to your prime contractor to receive your final payment.

### Information and Assistance

Additional forms and information, including fact sheets and frequently asked questions, are available on our website.

Website: [www.revenue.state.mn.us](http://www.revenue.state.mn.us)

Email: [withholding.tax@state.mn.us](mailto:withholding.tax@state.mn.us)

Phone: 651-282-9999 or 1-800-657-3594

This information is available in alternate formats.

## Form SDE, Exemption from Surety Deposits for Non-Minnesota Contractors

Please type or print clearly.

Non-Minnesota Contractor			Minnesota Tax ID Number	
Address			Contact Person	
City	State	ZIP Code	Daytime Phone	Email Address

Name of Contract Owner		Contact Person		Daytime Phone
Contract Owner's Address		City	State	ZIP Code
Project Number	Project Location Address		City	State ZIP Code
Total Contract Amount		Contract Start Date		Projected Contract Completion Date

**I request exemption from surety deposits under Minnesota Statute 290.9705 for this reason (check one box only):**

- I have a bond secured by an insurance company licensed in Minnesota. Attach Form SDB, *Non-Minnesota Contractor's Bond*.
- I have a cash surety. Bank or other financial institution: \_\_\_\_\_ Account number: \_\_\_\_\_
- I have done construction work in Minnesota during the past three calendar years and have fully complied with Minnesota income, sales and use, corporate franchise, and withholding tax laws during that time.

*I hereby certify that I have the legal authority to sign this form on behalf of the Non-Minnesota Contractor, and that the information is correct and complete to the best of my knowledge and belief. I authorize the Minnesota Department of Revenue: 1) to disclose pertinent return information to the Surety Company that issued the bond for this project if needed in order to collect on the bond; and 2) to disclose pertinent return information to the Contract Owner for this project if needed concerning the surety deposit and its withholding.*

Non-Minnesota Contractor's Signature	Title	Date
--------------------------------------	-------	------

**Email or mail this completed form to:**

Email: Contractor.Compliance@state.mn.us  
 Mail: Minnesota Department of Revenue  
 Mail Station 6501  
 600 N. Robert St.  
 St. Paul, MN 55146-6501

# Form SDE Instructions

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## When to Complete Form SDE

Complete and file Form SDE, *Exemption from Surety Deposits for Non-Minnesota Contractors*, with the Minnesota Department of Revenue before starting a construction project in Minnesota if all of these apply:

- You are a non-Minnesota construction contractor
- You have one or more contracts expected to exceed \$50,000 for construction work done in Minnesota
- You qualify for a surety deposit exemption (see Exemption Requirements)

You must have a Minnesota Tax ID Number to request an exemption. If you do not have a Minnesota Tax ID number:

- Apply online at [www.revenue.state.mn.us](http://www.revenue.state.mn.us)
- Call the department at 651-282-5225 or 1-800-657-3605

## Surety Deposit Requirement

If a business or government agency hires or contracts with you, they must withhold 8% (.08) from their payments to you as a Minnesota surety deposit if both of these apply:

- The work is being performed in Minnesota
- Total payments on the contract will exceed \$50,000

**Note:** All payments – including the first \$50,000 – are subject to the 8% withholding.

## Exemption Requirements

You may qualify for an exemption from the surety deposit requirements if one of these is true:

- You have done construction work in Minnesota during the past three calendar years and have filed all returns and paid all amounts due, including Minnesota income, withholding, corporate franchise, and sales and use tax.
- You give the department a bond that is secured by an insurance company licensed in Minnesota and is equal to 8% of the contract amount. The bond remains in effect until you satisfy all tax liabilities. You may complete Form SDB, Non-Minnesota Contractor's Bond, to send this bond to the department.
- You give the department a cash surety. A cash surety is evidence of a savings account, deposit, or certificate of deposit in, or issued by, a state bank, national bank, or savings and loan association doing business in Minnesota. You may keep any interest and dividends earned on the principal amount.

## If You're Exempt

If you qualify for an exemption, we will send you a Surety Deposit Withholding Waiver. Make a copy for your records and give the original letter to the business or government agency you are working for.

## If You're Not Exempt

If you do not qualify for an exemption, the business or government agency you are working for must withhold and remit 8% of each payment to you.

To have the deposits refunded to you, complete Form SDR, *Refund of Surety Deposits for Non-Minnesota Contractors*. If we determine that you have complied with all applicable Minnesota income, withholding, and sales and use tax laws for the periods covered by the deposit, we will send you a refund plus interest.

## Information and Assistance

Additional forms and information, including fact sheets and frequently asked questions, are available on our website. Website: [www.revenue.state.mn.us](http://www.revenue.state.mn.us)

Email: [withholding.tax@state.mn.us](mailto:withholding.tax@state.mn.us)

Phone: 651-282 9999 or 1-800-657-3594

This information is available in alternate formats.

## Use of Information

The information you enter on this form may be private or nonpublic under state law. We use it to determine if you qualify for a surety deposit exemption under Minn. Stat. § 290.9705. You are not required to provide the information requested; however, we are unable to process the exemption from surety deposits unless the form is complete. We cannot share any such private or nonpublic information without your written consent, authorization by law, or court order.

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

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

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

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

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

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

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

## 1.02 Terminology

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

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

## **ARTICLE 2—PRELIMINARY MATTERS**

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

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

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

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

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

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

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

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

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

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

### 3.01 *Intent*

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

### 3.02 *Reference Standards*

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

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

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

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

#### B. *Resolving Discrepancies*

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

### 3.04 *Requirements of the Contract Documents*

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

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

### 3.05 *Reuse of Documents*

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

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

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

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

### 4.02 *Starting the Work*

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

### 4.03 *Reference Points*

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

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

#### 4.04 *Progress Schedule*

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

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

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

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

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

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

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

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

## 5.02 *Use of Site and Other Areas*

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

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

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

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

### 5.03 *Subsurface and Physical Conditions*

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

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

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

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

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

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

5.04 *Differing Subsurface or Physical Conditions*

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

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

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

E. *Possible Price and Times Adjustments*

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

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

5.05 *Underground Facilities*

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

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

F. *Possible Price and Times Adjustments*

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

5.06 *Hazardous Environmental Conditions at Site*

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

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

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

and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

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

## ARTICLE 6—BONDS AND INSURANCE

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

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

### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the

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

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

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

6.03 *Contractor's Insurance*

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

by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and

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

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

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will

provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.

- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

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

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

6.06 *Receipt and Application of Property Insurance Proceeds*

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

**ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

7.01 *Contractor's Means and Methods of Construction*

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

7.02 *Supervision and Superintendence*

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

7.03 *Labor; Working Hours*

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

7.04 *Services, Materials, and Equipment*

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

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or

description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.

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

#### 7.06 *Substitutes*

- A. *Contractor’s Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that

Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
  3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
    - a. will certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design;
      - 2) be similar in substance to the item specified; and
      - 3) be suited to the same use as the item specified.
    - b. will state:
      - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
      - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
      - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
    - c. will identify:
      - 1) all variations of the proposed substitute item from the item specified; and
      - 2) available engineering, sales, maintenance, repair, and replacement services.
    - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a

Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

#### 7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation.

Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

#### 7.08 *Patent Fees and Royalties*

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

being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

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

#### 7.09 *Permits*

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

#### 7.10 *Taxes*

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

#### 7.11 *Laws and Regulations*

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

changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.12 *Record Documents*

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

#### 7.13 *Safety and Protection*

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

Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.14 *Hazard Communication Programs*

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

#### 7.15 *Emergencies*

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

#### 7.16 *Submittals*

##### A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

- 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
    - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
  2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.
  3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples*: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
  1. *Shop Drawings*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
  2. *Samples*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
  1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
  3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.
  5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
  6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
  7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
  8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.
- D. *Resubmittal Procedures for Shop Drawings and Samples*
1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
  2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
  3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

- E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*
1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
    - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
    - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
    - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
    - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
  2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is

not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:

1. Observations by Engineer;
  2. Recommendation by Engineer or payment by Owner of any progress or final payment;
  3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. Use or occupancy of the Work or any part thereof by Owner;
  5. Any review and approval of a Shop Drawing or Sample submittal;
  6. The issuance of a notice of acceptability by Engineer;
  7. The end of the correction period established in Paragraph 15.08;
  8. Any inspection, test, or approval by others; or
  9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 *Indemnification*

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

#### 7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

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

#### 8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

#### 8.02 *Coordination*

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

### 8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
  2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or

arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

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

### 9.01 *Communications to Contractor*

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

### 9.02 *Replacement of Engineer*

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

### 9.03 *Furnish Data*

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

### 9.04 *Pay When Due*

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

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

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

### 9.06 *Insurance*

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

### 9.07 *Change Orders*

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

### 9.08 *Inspections, Tests, and Approvals*

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

### 9.09 *Limitations on Owner’s Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

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

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

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

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the

responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.

- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

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

10.05 *Determinations for Unit Price Work*

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

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

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of

inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

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

#### 10.08 *Compliance with Safety Program*

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

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

#### 11.01 *Amending and Supplementing the Contract*

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

#### 11.02 *Change Orders*

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

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

#### 11.03 *Work Change Directives*

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

#### 11.04 *Field Orders*

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

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

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

11.06 *Unauthorized Changes in the Work*

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

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
  - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
  - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
  - 1. A mutually acceptable fixed fee; or
  - 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
    - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;

- d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
- f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

#### 11.08 *Change of Contract Times*

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

#### 11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.
- B. *Change Proposal Procedures*
  - 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
  - 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
    - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
    - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

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

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
  4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 *Notification to Surety*

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

## **ARTICLE 12—CLAIMS**

### 12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;

2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
  4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
  2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
  3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

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

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors

acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
    - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
  - c. *Construction Equipment Rental*
    - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
    - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
    - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site.
  - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:
1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
  2. The cost of purchasing, renting, or furnishing small tools and hand tools.
  3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  6. Expenses incurred in preparing and advancing Claims.
  7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

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

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

13.02 *Allowances*

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

### 13.03 *Unit Price Work*

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

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

### 14.01 *Access to Work*

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

#### 14.02 *Tests, Inspections, and Approvals*

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

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

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

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.

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

#### 14.04 *Acceptance of Defective Work*

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

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

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

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

### 15.01 *Progress Payments*

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

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

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

*D. Payment Becomes Due*

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

*E. Reductions in Payment by Owner*

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

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

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

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

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

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work,

property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

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

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
  - 2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

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

## 15.06 *Final Payment*

### A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
  - d. a list of all duly pending Change Proposals and Claims; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is

acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.

- D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 *Waiver of Claims*

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

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such adjacent areas;
  - 2. correct such defective Work;
  - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced.

Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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

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

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

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

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or Engineer.

- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

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

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in

connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

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

**ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

17.01 *Methods and Procedures*

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

## ARTICLE 18—MISCELLANEOUS

### 18.01 *Giving Notice*

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

### 18.02 *Computation of Times*

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

### 18.03 *Cumulative Remedies*

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

### 18.04 *Limitation of Damages*

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

### 18.05 *No Waiver*

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

### 18.06 *Survival of Obligations*

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

### 18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

## SUPPLEMENTARY CONDITIONS

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# SUPPLEMENTARY CONDITIONS

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## INTRODUCTION

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

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

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

## ARTICLE 1 DEFINITIONS AND TERMINOLOGY

### SC 1.01 Defined Terms

Modify the definition of *Technical Data*, Paragraph 1.01.A.46 by amending the first sentence of Paragraph 1.01.A.46.b to read as follows:

If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

Add to the list of definitions in Paragraph 1.01.A by inserting the following as numbered items in their proper alphabetical positions:

*Observer* – The individual or entity by with whom the Owner and Engineer is represented in the observation and construction of the Project.

*Project Manual* – The written documents prepared for, or made available for, procuring and construction the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing condition information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes. Only those items designated as such in the Agreement are to be considered Contract Documents.

## ARTICLE 2 PRELIMINARY MATTERS

### SC 2.02 Copies of Documents

Delete Paragraph 2.02.A in its entirety and replace with the following:

- A. Owner shall furnish to Contractor one printed copy of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

### SC 2.03 Before Starting Construction

Modify the beginning of the first sentence of Paragraph 2.03.A to read as follows:

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

**SC 2.04            Preconstruction Conference; Designation of Authorized Representative**

Delete Paragraph 2.04.A in its entirety and replace with the following:

- A. Before any work at the Site is started, Engineer will arrange a preconstruction conference attended by Owner, Contractor, Engineer, private utility owners, and others as appropriate to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

**SC 2.05            Acceptance of Schedules**

Delete the first sentence of Paragraph 2.05.A.

**SC 2.06            Electronic Transmittals**

Add the following new paragraphs to Paragraph 2.06:

- D. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.
- E. Electronic Documents that are exchanged may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitation, and restrictions, set forth in the Contract Documents.
- F. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for project purposes.

**ARTICLE 3    CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

**SC 3.02            Reference Standards**

Add the following new paragraph immediately after Paragraph 3.02.A:

- B. The Work shall be performed in accordance with:
  - 1. the Project Manual;
  - 2. the Plans;
  - 3. the 2025 Edition of the Minnesota Department of Transportation (MnDOT) Standard Specifications for Construction; and
  - 4. the 2025 Edition of the City Engineers Association of Minnesota (CEAM) Standard Specifications.

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

**SC 5.01            Availability of Lands**

Add the following language to Paragraph 5.01.A:

If the Contractor believes that there has been delay by Owner in furnishing land, right-of-way, or easements, Contractor's sole remedy shall be an extension of Contract Time, for which the Contractor may make a claim therefore as provided in Article 12.

**SC 5.06 Hazardous Environmental Conditions at Site**

Delete Paragraph 5.06.A in its entirety and replace with the following:

- A. *Reports and Drawings*: There are no reports or drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site.

**ARTICLE 6 BONDS AND INSURANCE**

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

Add the following new paragraphs immediately after Paragraph 6.01.A:

- 1. *Required Performance Bond Form*: The performance bond that Contractor furnishes will be in the form of EJCDC® C 610, Performance Bond, or as acceptable to the Owner.
- 2. *Required Payment Bond Form*: The payment bond that Contractor furnishes will be in the form of EJCDC® C 615, Payment Bond, or as acceptable to the Owner.

Add the following paragraphs immediately after Paragraph 6.01.B:

- 1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be two years after the date of Notice of Acceptability of Work.
- 2. After the Owner formally accepts the project and the Notice of Acceptability of Work is issued, Contractor shall furnish a maintenance bond in a bond amount of **100** percent of the final Contract Price. The maintenance bond period will extend to a date two years after the date of Notice of Acceptability of Work. Contractor shall deliver the fully executed maintenance bond no later than 10 days after the date of Notice of Acceptability of Work.
- 3. The maintenance bond must be issued by the same surety that issues the performance bond required under Paragraph 6.01.A of the General Conditions.

**SC 6.03 Contractor's Insurance**

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

- D. *Other Additional Insureds*: As a supplement to the provision of Paragraph 6.03.C of the General Conditions, the required policies, including but not limited to the commercial general liability, automobile liability, umbrella or excess policies, must include as additional insureds the following:
  - 1. City of Circle Pines (Owner)
  - 2. WSB LLC (Engineer)
- E. *Workers' Compensation and Employer's Liability*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance in accordance with the Minnesota statutory requirements and must include the following:
  - 1. Part 2, Employer's Liability including Stop Gap Liability for monopolistic states;
  - 2. Coverage C: All States Coverage;
  - 3. If applicable, USL&H, Maritime, Voluntary, and Foreign Coverage; and
  - 4. Waiver of subrogation in favor of the Owner.

Contractor must also require Subcontractors to provide workers' compensation insurance in accordance with the requirements above.

If the Contractor is self-insured for its obligation under the Worker's Compensation Statute in the jurisdiction where the Project is located, the Contractor must provide the Owner with a Certification of the Authority to Self-Insure.

<b>Worker's Compensation and Related Policies</b>	<b>Policy limits of not less than:</b>
<b>Workers' Compensation</b>	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
<b>Employer's Liability</b>	
Bodily Injury by disease per employee	\$100,000
Bodily Injury by disease aggregate	\$500,000
Bodily Injury by accident	\$100,000

- F. *Commercial General Liability – Claims Covered:* Contractor must provide and maintain commercial general liability insurance to cover claims arising from operations under the Contract, whether such operations are by the Contractor, Subcontractor, lower-tier subcontractor or by anyone directly or indirectly employed under the Contract.
- G. *Commercial General Liability – Form and Content:* Contractor's commercial liability policy must include the following types of coverage:
1. Premises and Operations Bodily Injury and Property Damage
  2. Personal and Advertising Injury
  3. Products and Completed Operations Liability
    - a. Such insurance must be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  4. Contractual Liability as provided in ISO form CG 00 01 12 04 13 or its equivalent
  5. Pollution exclusion with standard exception as per ISO Commercial General Liability Coverage Form – CG 00 01 12 04 13 or equivalent
  6. Independent Contractors – Let or Sublet Work
  7. Waiver of subrogation in favor of the Owner
  8. Owner names as an Additional Insured, to the extent permitted by law, for claims arising out of the Contractor's negligence or the negligence of those for whom the Contractor is responsible, for both ongoing and completed operations
  9. Coverage under the General Liability Policy(ies) of the Contractor will be as broadly construed for the Owner as is available to the Contractor.
- H. *Commercial General Liability – Excluded Content:* The commercial general liability insurance policy, including its coverages, will not contain any restrictive endorsement(s) excluding or limiting Broad Form Property Damage (BFPD) or Explosion, Collapse, Underground (XCU).
- I. *Commercial General Liability – Minimum Policy Limits:* The liability limits specified below are the minimum limits required, and any and all additional limits provided to the Contractor will be available on an excess, umbrella, or other basis to the additional insured for any and all covered claims.

<b>Commercial General Liability</b>	<b>Policy limits of not less than:</b>
Per Occurrence	\$2,000,000
Annual aggregate applying per Project or location	\$2,000,000
Annual aggregate applying to Products and Completed Operations	\$2,000,000

Fire damage (any one fire)	\$50,000
Medical expense (any one person per occurrence)	\$5,000

- J. *Automobile Liability*: Contractor must provide and maintain insurance to cover liability arising out of the operations, use, or maintenance of all owned, non-owned, and hired motor vehicles. A waiver of subrogation in favor of the Owner must also be included.

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

- K. *Aircraft Liability Insurance*: If the Contractor uses aircraft (including “Unmanned Aerial Vehicles”) to perform the Work, then the Contractor must provide Aviation (aircraft) insurance protecting it from claims for bodily injury and property damage whether the operations are by Contractor or by a Subcontractor or by anyone directly or indirectly employed under the Contract. The insurance must cover the Contractor and its employees as well as the Owner and the Owner’s employees as additional insured.

<b>Aircraft Liability</b>	<b>Policy limits of not less than:</b>
<b>Combined Single Limit</b>	
Combined Single Limit (Bodily Injury and Property Damage) per occurrence	\$2,000,000

- L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements*: Contractor may meet the policy limits specified for employer’s liability, commercial general liability, automobile liability, and aircraft liability through the primary policies alone, or through combinations of the primary insurance policy’s policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein.

- M. *Contractor’s Pollution Liability Insurance*: Contractor is not required to provide Pollution Liability Insurance under this Contract.

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

<b>Contractor’s Professional Liability</b>	<b>Policy limits of not less than:</b>
Each Claim	N/A
Annual Aggregate	N/A

**SC 6.04 Builder’s Risk and Other Property Insurance**

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

- A. *Builder’s Risk*: Contractor is not required to purchase and maintain builder’s risk insurance under this Contract. However, any damage or loss to property shall be the sole responsibility of the Contractor until final acceptance of the Work.

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

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

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

### **SC 7.03 Labor; Working Hours**

Amend Paragraph 7.03.C to read as follows:

- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, from 7:00 a.m. to 7:00 p.m., Monday through Friday; and 8:00 a.m. to 5:00 p.m. on Saturday. Contractor will not perform Work on Sundays or any legal holiday. The Contractor shall structure the proposed project schedule based on the stated working hours.

Add the following new paragraph to Paragraph 7.03:

- D. Contractor may perform Work outside regular working hours or on Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld. Requests for modification of working hours must be approved by the Owner. The Contractor shall submit all requests in writing to the Engineer.

### **SC 7.07 Concerning Subcontractors and Suppliers**

Add the following new paragraph to Paragraph 7.07:

- N. In accordance with MINN. STAT. 471.425, Contractor shall pay any subcontractor within 10 days of the Contractor's receipt of payment from the Owner.

### **SC 7.16 Submittals**

Amend Paragraph 7.16.B.1.a to read as follows:

Contractor shall submit as a minimum, one electronic copy or as required in the Specifications.

Add the following new paragraph immediately after Paragraph 7.16.B.1.b:

- a. Detailed, dimensioned manufacturer's drawings shall be submitted for all materials, apparatus and machinery, and for such fittings and devices as the Engineer may direct, including but not limited to: manhole/catch basin structures, castings, sewer pipe, watermain, lift stations, and waterworks brass.

Amend Paragraph 7.16.B.3 by striking out the following words:

and approval

Amend the second sentence of Paragraph 7.16.C.1 by striking out the following words:

and approval

Amend Paragraph 7.16.C.2 by striking out the following words:

and approval

Amend Paragraph 7.16.C.3 to read as follows:

Engineer's review of a separate item as such will not indicate acceptance of the assembly in which the item functions.

Amend the first sentence of Paragraph 7.16.C.4 by striking out the following words:

and approval

Amend Paragraph 7.16.C.5 by striking out the following words:

and approval

Amend Paragraph 7.16.C.6 by striking out the following words:

and approval

Amend Paragraph 7.16.C.7 to read as follows:

Neither Engineer's receipt, review or acceptance of a Shop Drawing or Sample will result in such item becoming a Contract Document.

Amend Paragraph 7.16.C.8 to read as follows:

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

Amend the first sentence of Paragraph 7.16.D.1 by striking out the following words:

and approval

Amend the first sentence of Paragraph 7.16.D.2 to read as follows:

Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required acceptance of an item with no more than two resubmittals.

Amend Paragraph 7.16.D.3 to read as follows:

If Contractor requests a change of a previously accepted Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

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

Amend Paragraph 7.17.D.5 by striking out the following words:

and approval

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

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

Add the following language at the end of Paragraph 8.01.C:

Contractor shall cooperate with all parties to facilitate the prompt completion of all contracts for work at or adjacent to the Site.

**SC 8.02          Coordination**

Add the following new paragraphs immediately following paragraph 8.02.B:

- C. Contractor is hereby advised that the following work may be performed at or adjacent to the Site by others during the Contract Time:
  - 1. The individual lot owners or their agents may be site grading and/or constructing buildings on the lots adjacent to the proposed streets.
  - 2. Private utility companies may be installing and/or relocating underground facilities.

**SC 8.03          Legal Relationships**

Add the following sub-paragraph to Paragraph 8.03.B:

- 3. If Owner performs work for the Contractor, the Contractor must pay Owner for such work with no deduction in Contract amount.

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

**SC 10.02        Visits to Site**

Add the following new paragraph immediately following paragraph 10.02.B:

- C. Throughout the construction phase, regular weekly meetings will be held by the Engineer on site to review progress and to discuss items necessary for orderly completion of the project. This weekly construction meeting shall include the Owner, Engineer, and Contractor. Contractor's representative must be able to make decisions for the Contractor pertaining to the project. All project conflicts shall be brought to these meetings, including requests for additional payment. Meeting minutes will be provided to all participants as a record of the meeting.

**SC 10.03        Resident Project Representative**

Add the following new subparagraph immediately after Paragraph 10.03.A:

- 1. On this Project, by agreement with the Owner, the Engineer will not furnish a Resident Project Representative. Rather, the Engineer will furnish an Observer to represent both the Owner and the Engineer at the Site and to assist Engineer in observing the progress and quality of the Work.

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

- C. The Observer will represent the Owner and the Engineer at the Site. The Observer's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. Observer's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The Observer will:
  - 1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
  - 2. *Safety Compliance:* Comply with Site safety programs, as they apply to Observer, and if required to do so by such safety programs, receive safety training specifically related to Observer's own personal safety while at the Site.
  - 3. *Liaison*

- a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.
  - 4. *Review of Work; Defective Work*
    - a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.
    - b. Observe whether any Work in place appears to be defective.
    - c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.
  - 5. *Inspections and Tests*
    - a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.
    - b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.
  - 6. *Payment Requests: Review Applications for Payment with Contractor.*
  - 7. *Completion*
    - a. Participate in Engineer's visits regarding Substantial Completion.
    - b. Assist in the preparation of a punch list of items to be completed or corrected.
    - c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
    - d. Observe whether items on the final punch list have been completed or corrected.
- D. The Observer will not:
- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
  - 2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
  - 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
  - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.
  - 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
  - 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
  - 7. Authorize Owner to occupy the Project in whole or in part.

**SC 10.07      Limitations on Engineer's Authority and Responsibilities**

Add the following new sub-paragraph to paragraph 10.07.A:

- 1. Insofar as the subject matter of any pertinent claim, dispute, or other matter falls within the realm of the technical expertise of Engineer, Engineer shall not render any decision on any claims, disputes, or other matters the subject matter of which, at Engineer's sole discretion, requires legal, rather than technical interpretation.

Modify paragraph 10.07.E to read as follows:

- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Observer.

Add the following new paragraph immediately following paragraph 10.07.E:

- F. Paragraph 10.07 pertains to the Engineer's responsibilities to the Contractor and its subcontractors, suppliers, and other agents. Nothing in this paragraph shall be construed to limit the Engineer's responsibilities to the Owner, if any, under the Engineer's contract with the Owner.

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

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

Add the following new paragraphs immediately following paragraph 11.06.A:

- B. Except as specifically authorized in writing by the Engineer at the time additional work is done beyond the original scope of the Contract Documents, the Contractor shall make no claims for additional compensation. The Contractor's plea of ignorance of foreseeable conditions which will create difficulties or hindrances in the execution of the Work will not be acceptable to the Owner as an excuse for any failure of the Contractor to fulfill the requirements of the Contract Documents, and shall not be a basis for the Contractor's claim for additional compensation.
- C. Any discrepancies in or conflicts between the items described in these Contract Documents must be submitted in writing to the Engineer for adjustment prior to proceeding with the Work as any claims for additional compensation to achieve compliance with the requirements of those items will not be allowed or considered.

### **SC 11.09      Change Proposals**

Delete paragraph 11.09.B in its entirety, and replace with the following:

- B. *Change Proposal Procedures:* All Change Proposal procedures shall follow the requirements of MnDOT 1403, Notification for Contract Revisions.

## **ARTICLE 12 CLAIMS**

### **SC 12.01      Claims**

Amend the first sentence of paragraph 12.01.B to read as follows:

The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 10 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 10 days of the decision under appeal.

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

### **SC 13.03      Unit Price Work**

Delete Paragraph 13.03.E in its entirety.

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

### **SC 14.02      Tests, Inspections, and Approvals**

Add the following sub-paragraphs to paragraph 14.02.A:

- 1. Provide a minimum 48-hour notice to the Observer for any testing that must be observed or accomplished by someone other than the Contractor's personnel. All final tests and inspections shall be performed in the presence of the Observer.

2. Signed copies of all reports on tests shall be sent at once to the Owner, Engineer, and Contractor.
3. Inspection and testing shall in no way relieve the Contractor or supplier from the responsibility of furnishing materials and workmanship in accordance with the Contract Documents.

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

### **SC 15.01 Progress Payments**

Amend paragraph 15.01.A to read as follows:

- A. *Basis for Progress Payments:* The Contractor's Bid Unit Prices will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03.

Delete paragraph 15.01.D and insert the following:

- D. *Payment Becomes Due*
  1. Thirty days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor, unless extenuating circumstances exist which would preclude such payment by Owner to Contractor. If such extenuating circumstances exist, then payment shall be made within 45 days after Owner received the Application for Payment.
  2. Contractor's acceptance of partial payment constitutes a certification by the Contractor that the Work covered by the partial payment meets the Contract requirements.
  3. Contractor must promptly notify the Owner if the Contractor receives an underpayment or overpayment for the Work. The Contractor must refund the Owner any overpayment in response to a request for refund of overpayment within 30 days of the Owner's request. If the Contractor fails to refund overpayment, the Owner may deduct the amount of overpayment from any moneys due or becoming due to the Contractor.

### **SC 15.03 Substantial Completion**

Add the following new sub-paragraph to Paragraph 15.03.B:

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

### **SC 15.05 Final Inspection**

Add the following language at the end of the second sentence of Paragraph 15.05.A:

If, after such measures are taken, subsequent inspections by the Engineer reveal that any of the previously identified construction items remain incomplete or defective, the Engineer will again notify the Contractor in writing of the remaining construction items. All costs associated with any subsequent inspections in which said remaining particulars are revealed, will be documented by the Engineer and paid by the Contractor to the Owner.

### **SC 15.06 Final Payment**

Add the following new sub-paragraphs to Paragraph 15.06.A:

4. Before final application for payment is made for the Work, the Contractor must make satisfactory showing of compliance with MINN. STAT. 290.92, which requires the withholding of state income taxes for wages paid to employees on this project. Receipt by the Engineer of a certificate of Compliance from the Commissioner of Taxation to the Owner will satisfy this requirement. The Contractor is advised that before such certificate can be issued, the Contractor must first place on file with the Commissioner of Taxation an affidavit that the Contractor has complied with the provisions of MINN. STAT. 290.92. The required affidavit form will be supplied by the Commissioner of Taxation, Centennial Building, St. Paul, Minnesota, on request.
5. Final payment will not be made until the Contractor has filed with the Engineer evidence in the form of an affidavit or such other evidence as may be required that all claims against the Contractor by reason of the Contract have been fully paid or satisfactorily secured. This shall be in the form of IC134 forms, paid-in-full final lien waivers from the Contractor, subcontractors, and major suppliers, and a Consent of Surety. Such evidence shall precede or accompany the final application for payment. If evidence is not furnished, the Owner may retain out of any monies due said Contractor sums sufficient to cover all lienable claims unpaid.

**SC 15.08      Correction Period**

Add the following new paragraphs to Paragraph 15.08:

- G. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be the number of years set forth in SC 6.01.B.1.
- H. With regard to any surface concrete work, including but not limited to sidewalks, curb, gutter, and driveway aprons within the project area, the Contractor shall assume full responsibility for any warranty work unless written approval is provided by the Owner releasing the Contractor for the responsibility for damages. The intent of this provision is to release the Contractor from accepting monetary losses for destruction of surface concrete work due to damages and circumstances beyond control of the Contractor. At no point during the two-year correction period shall this relieve the Contractor's responsibility for correction of the defective work as states above, or as caused by poor construction and defective materials on surface concrete work within the project area. The Owner or engineer shall make the final determination of what work is defective within the project area at any point within the two-year correction period.

**ARTICLE 17 FINAL RESOLUTION OF DISPUTES**

**SC 17.02      Mediation**

Add the following new paragraph to Article 17:

*17.02 Mediation*

- A. To resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Contractor and the Engineer agree that all disputes between them arising out of or relating to this agreement shall be resolved, if possible, at the lowest possible staff level. If the individuals with full settlement authority for the Contractor and the Engineer are unable to achieve a resolution, the dispute shall be submitted to non-binding mediation.
- B. The rights and remedies available to the Contractor shall be limited to breach of Contract, and no other cause of action, including, without limitation, negligence, misrepresentation or other tort theory. The Owner or Contractor may assert any such breach of contract claim in

any court of competent jurisdiction. Neither the Owner nor the Contractor shall be entitled to a jury trial in any such action.

- C. The rights and remedies to the Owner hereunder shall be in addition to and shall not be constructed in any way as a limitation of any rights and remedies available to the Owner, which is otherwise available by law or contract, by special warranty or guarantee, or by other provision of the Contract Documents.
- D. The provision of Paragraph 17.02 shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which it may apply. All representations, warranties and guarantees made in the Contract Documents shall survive final payment, termination, or completion of this agreement.
- E. No waiver or failure to enforce any part of provision of the Contract Documents, including but not limited to the change order process, shall be deemed to be waiver by the Owner of any subsequent default or breach of the same or any other part of provision contained herein, or right to enforce the same or any other part or provision contained herein.

# DIVISION 1

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DIVISION 1

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GENERAL REQUIREMENTS

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# DIVISION 1

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## GENERAL REQUIREMENTS

### INTRODUCTION

These General Requirements amend or supplement Division I of the Minnesota Department of Transportation (MnDOT) Standard Specifications for Construction (2025 Edition). Unless specifically stated, provisions of MnDOT Division I which are not amended or supplemented **shall not apply** to this Contract.

### GR - 1 SUMMARY OF WORK

The City of Circle Pines shall include the furnishing of all labor, materials, tools, and equipment necessary to complete seal coat, fog seal, router and crack seal, and appurtenant work as shown on the Plans and specified herein.

### GR - 2 WORK SEQUENCE

The Contractor shall:

1. Perform its work in such a manner as to cause the least interference with adjoining property owners and the general public.
2. All proposed haul roads must be approved by the Engineer. The Contractor cannot utilize newly paved streets as haul roads. Any damage to existing streets due to unapproved construction use will be repaired at the Contractor's expense.

### GR - 3 (1401) INTENT OF CONTRACT

The provisions of MnDOT 1401 are modified and/or supplemented with the following:

Delete Paragraph 1401.1 in its entirety.

### GR - 4 (1402) CONTRACT REVISIONS

The provision of MnDOT 1402 are modified and/or supplemented with the following:

Delete Paragraph 1402.6 in its entirety.

### GR - 5 (1403) NOTIFICATION FOR CONTRACT REVISIONS

The provision of MnDOT 1403 are modified and/or supplemented with the following:

Modify the first sentence of MnDOT 1403.6 to read as follows:

If the Contractor disagrees with the Engineer's final written response or the Engineer's response is untimely, the Contractor may pursue a claim in accordance with the General Conditions, Article 12.

### GR - 6 (1404) MAINTENANCE OF TRAFFIC

The provisions of MnDOT 1404 are modified and/or supplemented with the following:

Add the following new paragraph to MnDOT 1404.1:

#### A. Access to Properties

The Contractor shall maintain driveway access to the residents at the end of each day. Each resident must be able to drive their vehicle into the driveway. The only exception is the time after the curb and gutter is poured, and after the driveway is restored. The Contractor shall salvage aggregate or recycled bituminous from the project, or haul approved granular material to the project site, at no additional cost to the Owner for use in ramping the driveways to maintain access.

The Contractor shall accommodate special access needs of the residents (medical needs, working the night shift, etc.) and provide access to driveways and roadways as required.

If the Engineer determines access to be unsuitable for individual residences, the Contractor shall make the necessary improvements to reestablish an acceptable access to the property.

The Contractor shall notify the Owner at least one week in advance of any daytime road closures or parking/access restrictions.

## **GR - 7 (1405) USE OF MATERIALS FOUND ON THE PROJECT**

The provisions of MnDOT 1405 shall apply.

## **GR - 8 (1406) PRESERVATION OF HISTORICAL OBJECTS**

The provisions of MnDOT 1406 shall apply.

## **GR - 9 (1407) FINAL CLEANUP**

The provisions of MnDOT 1407 are modified and/or supplemented with the following:

During the progress of the Work, the area affected shall be kept clean and free of all rubbish and surplus materials. All unnecessary construction equipment shall be removed from the Site and all damage repaired so that the public and adjacent property owners are inconvenienced as little as possible.

Where materials or debris have washed, flowed into, or have been placed in water courses, ditches, gutters, drains, catch basins, or elsewhere as a result of the Contractor's operations, such material or debris shall be removed and satisfactorily disposed of during progress of the Work. All ditches, channels, drains, etc. shall be kept in a clean and neat condition.

On or before the completion of the Work, the Contractor shall, unless otherwise directed in writing, remove all temporary works, tools and machinery, other construction equipment, or stockpiles placed by the Contractor. The Contractor shall remove all rubbish from any grounds which the Contractor occupied and shall leave all the premises and adjacent properties affected by the operation in a neat and restored condition satisfactory to the Engineer.

Street sweeping (with a pickup broom) will be required periodically. Any material deposited on streets adjacent to the project from construction or hauling operations shall be cleaned as directed by the Engineer. If the Contractor fails to clear adjacent roadways within 24 hours of notification, the Engineer shall arrange to have the roadways cleaned by the Owner and bill the Contractor the greater amount of the sweeping cost or \$500, per occurrence. The \$500 fee for street sweeping will be deducted from project retainage for each occurrence.

## **GR - 10 (1502) PLANS AND WORKING DRAWINGS**

The provisions of MnDOT 1502 are modified and/or supplemented with the following:

Drawings provided by the Owner will include the information, as applicable to the project, in accordance with MnDOT 1502. The Owner's Standard Plates, MnDOT's Standard Plates, and MnDOT's Standard Plans may provide supplemental information.

## **GR - 11 (1503) CONFORMITY WITH CONTRACT DOCUMENTS**

The provisions of MnDOT 1503 shall apply.

## **GR - 12 (1504) COORDINATION OF CONTRACT DOCUMENTS**

The provisions of MnDOT 1504 are modified and/or supplemented with the following:

Delete the second sentence of the first paragraph of MnDOT 1504 and replace with the following:

If discrepancies exist between the Contract documents, the following order of precedence applies:

- (1) Addenda,
- (2) Project Manual,
- (3) Project Plans,
- (4) MnDOT Standard Specifications for Construction, and
- (5) CEAM Standard Specifications.

## **GR - 13 (1505) COOPERATION BY CONTRACTORS**

The provisions of MnDOT 1505 shall apply.

## **GR - 14 (1506) SUPERVISION BY CONTRACTOR**

The provisions of MnDOT 1506 shall apply.

## **GR - 15 (1511) INSPECTION OF WORK**

The provisions of MnDOT 1511 are modified and/or supplemented with the following:

The Contractor shall notify the Engineer anytime they anticipate working on this project. No work will be allowed without notifying the Engineer a minimum of 24 hours beforehand.

Any person representing Federal or State agencies, the Engineer, or Owner shall have the right of entry to inspect the Work being performed by the Contractor. If the case warrants, the Contractor shall provide proper facilities for such access and inspection.

## **GR - 16 (1512) UNACCEPTABLE AND UNAUTHORIZED WORK**

The provisions of MnDOT 1512 are modified and/or supplemented with the following:

MnDOT 1512.1 is deleted in its entirety and replaced with the following:

### **1512.1 UNACCEPTABLE WORK**

The Owner will consider all Work and Materials that do not meet the Contract requirements, or do not meet generally accepted industry standards if the Contract does not provide specific standards, to be unacceptable.

Unacceptable Work resulting from poor workmanship, use of nonconforming Materials, damage through carelessness, or any other cause existing before final acceptance of the Work

shall be handled in the same manner as Defective Work, in accordance with Article 14 of the General Conditions.

## **GR - 17 (1513) RESTRICTIONS ON MOVEMENT AND STORAGE OF HEAVY LOADS AND EQUIPMENT**

The provisions of MnDOT 1513 are modified and/or supplemented with the following:

The Contractor shall limit the roadways utilized for delivery of equipment and for hauling operations.

The Contractor shall provide and use only rubber tire dozers, front end loaders, and other necessary equipment on all work where street pavements or portions of pavements are undisturbed for the protection of the pavements or in such locations as the Engineer may direct.

No compensation will be allowed to the Contractor for replacement of damaged utilities and resurfacing or replacing damaged pavements.

## **GR - 18 (1514) MAINTENANCE DURING CONSTRUCTION**

The provisions of MnDOT 1514 are modified and/or supplemented with the following:

Delete the last paragraph of MnDOT 1514 and replace with the following:

If the Engineer partially accepts Work under Article 15 of the General Conditions, then the Contractor is relieved of responsibility for maintenance of that portion of the Work that has been partially accepted, except as directed by the Engineer. The Owner will pay for the Engineer-directed Work at Contract Unit Prices or as Extra Work in accordance with MnDOT 1402, "Contract Revisions."

## **GR - 19 (1515) CONTROL OF HAUL ROADS**

The provisions of MnDOT 1515 shall apply.

## **GR - 20 (1601) SOURCE OF SUPPLY AND QUALITY**

The provisions of MnDOT 1601 shall apply.

## **GR - 21 (1603) MATERIALS: SPECIFICATIONS, SAMPLES, TESTS, AND ACCEPTANCE**

The provisions of MnDOT 1603 are modified and/or supplemented with the following:

### **1603.2 SAMPLING AND TESTING**

Delete the first paragraph of MnDOT 1603.2 and replace with the following:

Refer to the Schedule of Materials Control below for sampling and testing of Materials. Testing of Materials shall be completed to assure quality of materials and/or workmanship. The Observer will coordinate and order the tests to be performed. Initial testing of materials in accordance with the requirements below, will be paid for by the Owner. Any retesting due to failures shall be at the expense of the Contractor.

#### **Schedule of Materials Control**

TRENCH BACKFILL AND SUBGRADE DENSITY TESTING			
Location	Depth Below Aggregate Base	Minimum Required Compaction	Density Requirements
Green Areas	All Depths	95%	1/1,000 LF at various depths
Longitudinal Trench	0-3 FT	100%	1/500 LF at various depths
	3+ FT	95%	
Transverse Trench	0-3 FT	100%	1/250 LF every 2 ft vertical
	3+ FT	95%	
Subgrade	0-3 FT	100%	1/500 LF
	3+ FT	95%	

AGGREGATE BASE AND SELECT GRANULAR TESTING		
Test Type	Frequency	Test Requirements
Gradation: Aggregate Base	1/4,000 tons	2 tests minimum per source
Gradation: Select Granular	1/10,000 tons	1 test minimum per source
Density Testing	1/500 LF	100% Density of Standard Proctor or Penetration Index Method
Proof Roll	All	Top of Subgrade and Aggregate Base

CONCRETE TESTING						
Structure	Mix Designation	Testing Frequency	# of 28 Day Cylinders	Required 28 Day Compressive Strength (PSI)	Slump Range	Air Content
Hand-Formed Curb & Gutter and Flatwork	3F52	1/100 CY	3	4,500	2 - 5"	5 - 8.5%
Slip-Formed Curb & Gutter and Flatwork	3F32	1/100 CY	3	4,500	1/2 - 3"	5 - 8.5%

BITUMINOUS TESTING				
PLEASE SEE DIVISION 2 OF PROJECT MANUAL FOR REQUIRED TESTING METHOD				
Density Testing Method	Density Test	Test Rate	Mix Tests	Mix Test Rate
Maximum Density	Nuclear Density	1 per 500 LF	MnDOT Gyrotory Mix Properties	1 / mix type / day
	Density Cores	1 Companion Per Lot	MnDOT Gyrotory Mix Properties	
Quality Compaction	Roll Pattern	1 / mix type / project	Extraction & Gradation	

Add the following new paragraph to MnDOT 1603.2:

Copies of all test results, either passing or failing, shall be provided to the Observer, Owner, and Engineer. Failing test results shall be retested to confirm compliance with the project specifications.

**GR - 22 (1605) SUBSTITUTE MATERIALS**

The provisions of MnDOT 1605 shall apply.

**GR - 23 (1606) STORAGE OF MATERIALS**

The provisions of MnDOT 1606 are modified and/or supplemented with the following:

Any disturbed area shall be cleaned up and fully restored to the pre-existing condition prior to closing out this project. The Contractor shall be required to install protective fencing and silt fence around the storage area. The protection, cleanup, and restoration of the project storage area shall be the Contractor's responsibility; no compensation will be made for this work. It is anticipated that all work, including stockpiling of materials, will be completed within the roadway right-of-way.

**GR - 24 (1607) HANDLING MATERIALS**

The provisions of MnDOT 1607 shall apply.

**GR - 25 (1608) UNACCEPTABLE MATERIALS**

The provisions of MnDOT 1608 shall apply.

## **GR - 26 (1609) DEPARTMENT PROVIDED MATERIAL**

The provisions of MnDOT 1609 shall apply.

## **GR - 27 (1701) LAWS TO BE OBSERVED**

The provisions of MnDOT 1701 are modified and/or supplemented with the following:

The Contractor shall not discriminate against prospective employees because of age, race, color, sex, creed, religion, nationality, or disability.

Delete MnDOT 1701.2 in its entirety and replace with the following:

### **1701.2 WORKER CONDUCT**

The Owner intends to provide a workplace free of violence, threats of violence, harassment, and discrimination. The Owner has zero tolerance for violence in the workplace. Contractors must maintain a workplace free of violence, harassment, and discrimination. The Contractor must immediately remove from the Project any employee of the Contractor or a Subcontractor in violation of these requirements.

Delete MnDOT 1701.3 in its entirety.

Delete MnDOT 1701.5 in its entirety and replace with the following:

### **1701.5 PROMPT PAYMENT AND RETAINAGE**

#### **A. Prompt payment of Subcontractors is required by Minnesota Statutes, section 471.425.**

The Contractor must pay a Subcontractor no later than ten days after receiving payment from the Owner for undisputed Work provided by that Subcontractor. If the Contractor fails to pay a Subcontractor on time, then the Contractor must pay interest, at the rate of 1.5 percent per month or any part of a month, to the Subcontractor on the undisputed amount not paid on time. For an unpaid amount under \$100, the Contractor must pay the actual interest penalty (calculated at 1.5 percent per month) or \$10, whichever is greater.

MINN. STAT. 471.425, subd. 4(a), also provides that a Subcontractor who prevails in a civil action to collect interest penalties from a prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

#### **B. Payment of retainage is governed by Minnesota Statutes, section 337.10, and 15.72.**

The Contractor may not withhold more than 5 percent in retainage from a Subcontractor, as provided by MINN. STAT. 337.10 subd. 4(b). The Contractor must pay any retainage no later than 10 Calendar Days after the Contractor receives payment of retainage from the Owner, unless there is a dispute about the Work under a subcontract. If there is a dispute about the Work under a subcontract, the Contractor must pay out retainage to any Subcontractor whose Work is not involved in the dispute, and must provide a written statement detailing the amount and reason for the withholding to the affected Subcontractor.

## **GR - 28 (1702) PERMITS, LICENSES, AND TAXES**

The provisions of MnDOT 1702 are modified and/or supplemented with the following:

The following permits will be acquired by the Owner (except as noted). The Contractor is required to follow the provisions of all permits:

Anoka County:

A Right-of-Way Permit for work within County right-of-way (County Highway 23) will be required. The permit shall be obtained by the Contractor. The Contractor is responsible for registering with Anoka County and following permit requirements.

**GR - 29 (1703) PATENTED DEVICES, MATERIALS, AND PROCESSES**

The provisions of MnDOT 1703 shall apply.

**GR - 30 (1706) EMPLOYEE HEALTH AND WELFARE**

The provisions of MnDOT 1706 are modified and/or supplemented with the following:

The Contractor, at their own expense, shall provide and maintain temporary toilet facilities at the site during the construction period sufficient for the scheduled workforce. The Contractor and Engineer shall agree to the location of the temporary toilet facilities.

**GR - 31 (1707) PUBLIC CONVENIENCE AND SAFETY**

The provisions of MnDOT 1707 are modified and/or supplemented with the following:

The Contractor shall comply with local and state ordinances on noise abatement. All equipment shall have effective mufflers on engine exhaust systems.

The Contractor shall be required to accommodate garbage collection while the project is under construction. Coordination shall include contact with the garbage companies service the area and maintaining access to the individual residences. If the Contractor fails to accommodate garbage collection, the Contractor shall contract independently to have the garbage removed at no cost to the Owner.

The Contractor shall provide any barricades, fences or other means of protection necessary to properly execute the work and adequately protect its employees, employees of the Owner, employees of the Engineer, and members of the public according to federal, state, and local regulators. All utility trenches shall be backfilled at the end of each working day to the satisfaction of the Engineer. All labor and materials necessary to comply with these provisions are incidental, and no payment shall be made.

**GR - 32 (1710) TRAFFIC CONTROL DEVICES**

The provisions of MnDOT 1710 are modified and/or supplemented with the following:

Modify the first sentence of MnDOT 1710.6 to read as follows:

In accordance with the General Conditions, the Engineer will accept or reject a traffic control device provided by the Contractor, but not incorporated in the final construction, based on acceptable day and night performance.

**GR - 33 (1712) PROTECTION AND RESTORATION OF PROPERTY**

The provisions of MnDOT 1712 are modified and/or supplemented with the following:

The Contractor shall protect, and/or remove and reinstall all fences, street signs, retaining walls, and other items required to construct the proposed improvements. Work associated with protecting, and/or removing and reinstalling fences, street signs, lawn irrigation systems, and other items shall be considered incidental to the project unless specific bid items are included.

The Contractor shall take whatever steps necessary to protect adjoining properties and structures from hazards due to performance of the work. The Contractor is responsible for any and all damage to properties and structures that occur as a result of the Contractor's operations.

The street and utility construction may occur in close proximity to a number of existing structures. The Contractor shall use shoring or other means as necessary to ensure that those structures are protected during construction.

Existing residences may be sensitive to vibrating equipment. The Contractor shall take care when utilizing vibratory equipment to avoid damage to adjoining structures. Damage to structures resulting from the use of vibratory equipment is the responsibility of the Contractor. In the event of a complaint presented to the Contractor by a property owner, a pre-construction condition survey and vibration monitoring or other methods as determined by the Contractor will be required to be provided at the Contractor's expense.

All labor and materials necessary to comply with the provisions of this section are incidental, and no payment shall be made.

Delete Paragraph MnDOT 1712.1.A in its entirety and replace with the following:

#### **A. Monuments**

The Contractor shall preserve all land and property corner monuments, Right-of-way monuments, and vertical and horizontal control point monuments in the vicinity of the Work. The Owner will mark all such monuments the Owner is aware of prior to construction. The Contractor shall notify the Engineer of any monument, whether the Owner has marked them or not, which the Contractor may disturb, in sufficient time to allow the Engineer to establish ties to the corner. The replacement of monuments removed by the Contractor shall be completed by the Owner at the Contractor's expense.

### **GR - 34 (1716) CONTRACTOR'S RESPONSIBILITY FOR WORK**

The provisions of MnDOT 1716 are modified and/or supplemented with the following:

MnDOT 1716 is deleted in its entirety and replaced with the following:

#### **1716 CONTRACTOR'S RESPONSIBILITY FOR WORK**

The Contractor is responsible for the Work until the Engineer issues the Notice of Acceptability of Work in accordance with the General Conditions. The Contractor shall protect the Work against injury or damage from weather or other causes arising from the execution or non-execution of the Work. The Contractor shall rebuild, repair, and correct injuries or damage to the Work at no additional cost of the Owner before the Engineer will accept the Project, unless either of the following is true:

- (1) The Contract specifies otherwise
- (2) The damage to the Work was caused by unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including acts of God such as earthquake, tidal wave, flood, tornado, hurricane, other cataclysmic phenomenon of nature, or acts of a public enemy or of governmental authorities.

If the Owner suspends the Work, the Contractor shall perform the following functions at no additional cost to the Owner:

- (1) Take precautions to prevent damage to the Project
- (2) Provide or normal drainage in accordance with MnDOT 2773 and MnDOT 2574.5.C
- (3) Erect necessary temporary Structures, signs, or other facilities in accordance with MnDOT 1404 and MnDOT 1710
- (4) Take precautions to protect new tree growth and other vegetative growth against injury as specified in MnDOT 2571, MnDOT 2572 and MnDOT 2574.5.C

#### **1716.1 MAINTENANCE PERIOD**

The Contractor shall guarantee and maintain the stability of all work, equipment and materials for a period of two years from the date of Notice of Acceptability of Work. The Contractor shall provide as part of the contract security a separate two-year maintenance bond to be dated to begin the date of Notice of Acceptability of Work. The provisions of this paragraph shall not be construed as restricting Contractor's liability for breach of contract by reason of non-conformance with the specification for defects or faulty workmanship.

### **GR - 35 (1801) SUBLETTING OF CONTRACT**

The provisions of MnDOT 1801 are modified and/or supplemented with the following:

Modify the first sentence of the eighth paragraph of MnDOT 1801 to read as follows:

The Contractor must ensure that the subcontracts at least contain the following (if required by the Contract):

### **GR - 36 (1802) QUALIFICATIONS OF WORKERS**

The provisions of MnDOT 1802 are modified and/or supplemented with the following:

Modify the last sentence of MnDOT 1802 to read as follows:

If the Contractor fails to remove a Subcontractor or person as directed by the Engineer, or fails to provide suitable and sufficient personnel for the proper prosecution of the Work, the Owner may suspend the Work until the Contractor complies.

### **GR - 37 (1804) PROSECUTION OF WORK**

The provisions of MnDOT 1804 are modified and/or supplemented with the following:

#### **1804.1 PROSECUTION CONTROL**

Delete the first sentence of the first paragraph of MnDOT 1804.1.

Delete the third and fourth paragraphs of MnDOT 1804.1 and replace with the following:

Should the Contractor fail to maintain satisfactory progress, the Engineer will require that the Contractor provide additional resources (e.g., labor, Materials, Equipment) as necessary to bring the Work up to the level of progress required in the current accepted Progress Schedule to ensure completion of the Work within the time(s) specified in the Contract.

### **GR - 38 (1805) METHODS AND EQUIPMENT**

The provisions of MnDOT 1805 shall apply.

### **GR - 39 (1806) DETERMINATION AND EXTENSION OF CONTRACT TIME**

The provisions of MnDOT 1806 are modified and/or supplemented with the following:

Delete MnDOT 1806.1 in its entirety and replace with the following:

#### **1806.1 GENERAL**

The Contractor shall prosecute the Work continuously and effectively, with the least possible delay, to the end that all Work is completed within the Contract Time.

If the Owner issues a Notice to Proceed, the starting date established in the Notice to Proceed takes precedence over the Contract starting date in the Agreement.

The Owner will not consider a plea by the Contractor that the Contract Time was not sufficient as a valid reason for an extension of the Contract Time.

If the Owner grants an extension of the Contract Time, the extended time for completion will be in full force and effect as though it was originally specified.

##### **A. Notice to Proceed**

The Notice to Proceed is anticipated to be issued by the Owner in May 2026. The exact date of issuance will be determined based on the Contractor's schedule. Construction shall start within seven days of receiving the Notice to Proceed.

##### **B. Completion Dates**

The Work will be substantially completed on or before September 4, 2026.

Substantial completion includes seal coating, fog sealing, and crack repair.

The Work will be ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before September 18, 2026. Final completion includes resolving punch list items.

The project schedule has been set to accommodate sufficient time for private utility relocation and weather delays. It is the Contractor's responsibility to complete the project within the assigned schedule. No extension of time will be granted for weather conditions typical to the time of year the work is undertaken.

Delete MnDOT 1806.2 in its entirety.

Delete MnDOT 1806.3 in its entirety.

Delete MnDOT 1806.4 in its entirety.

#### **GR - 40 (1807) FAILURE TO COMPLETE THE WORK ON TIME**

The provisions of MnDOT 1807 are modified and/or supplemented with the following:

Contractor and Owner recognize that time is of the essence and that the Owner will suffer financial loss and other losses if the work is not completed within the times specified by the Owner, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the Owner as follows:

- The liquidated damages shall be in accordance with Table 1807-1 Schedule of Liquidated Damages for all stated completion dates, as well as any intermediate completion dates.

#### **GR - 41 (1901) MEASUREMENT OF QUANTITIES**

The provisions of MnDOT 1901 shall apply.

#### **GR - 42 (1902) SCOPE OF PAYMENT**

The provisions of MnDOT 1902 are modified and/or supplemented with the following:

Delete the second sentence of MnDOT 1902 in its entirety.

#### **GR - 43 (1903) COMPENSATION FOR ALTERED QUANTITIES**

The provisions of MnDOT 1903 are modified and/or supplemented with the following:

The Owner reserves the right to reduce certain quantities or delete certain items from each section of the Bids as the Owner sees fit, either before or after the Award of Contract.

There will be no additional compensation due to remobilization of equipment as necessary to complete punch list items or other items not completed by the Contractor.

There will be no additional compensation due to restocking charges for materials not used on the project.

#### **GR - 44 (1910) COST ESCALATION**

The provisions of MnDOT 1910 shall apply.

## DIVISION 2

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### SPECIFICATIONS

2021	MOBILIZATION .....	1
2331	BITUMINOUS PAVEMENT CRACKS TREATMENT .....	1
2355	BITUMINOUS FOG SEAL .....	6
2356	BITUMINOUS SEAL COAT .....	6
2563	TRAFFIC CONTROL .....	7
2582	PAVEMENT MARKINGS .....	12

**DIVISION 2**

**SPECIFICATIONS**

**2021 MOBILIZATION**

The provisions of MnDOT 2021 are modified and/or supplemented as follows:

**2021.5 BASIS OF PAYMENT**

Payment will be made based on the following schedule, with partial payments in accordance with MnDOT Table 2021.5-1 as revised below:

<b>Table 2021.5-1 Mobilization Partial Payments</b>		
<b>When</b>	<b>Contract Unit Price for mobilization is less than 10 percent of the total Contract amount, pay</b>	<b>Contract Unit Price for mobilization exceeds 10 percent of the total Contract amount, pay</b>
<b>Percent of Original Contract Amount Completed</b>	<b>Percent of Mobilization</b>	<b>Percent of Original Contract Amount*</b>
5	50	5
15	75	7.5
25	100	10
90	100	---

\* If the Contract Unit Price for mobilization exceeds 10 percent of the total original Contract amount, the Owner may withhold (on any partial estimate) the portion in excess of 10 percent until the Contractor earns at least 90 percent of the original Contract amount.

<u>Item No.</u> 2021.501	<u>Item</u> MOBILIZATION	<u>Unit</u> LS
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**2331 BITUMINOUS PAVEMENT CRACKS TREATMENT**

**2331.1 DESCRIPTION**

This project includes crack routing, cleaning, and sealing in the locations identified in the maps in **Appendix A**. This work shall consist of routing and sealing transverse cracks less than or equal to 0.75 inches wide and as identified by the Engineer. Longitudinal and alligator cracks and transverse cracks greater than 0.75 inches wide shall be cleaned and sealed as directed by the Engineer.

**2331.2 MATERIALS**

Rout and Seal ..... MnDOT 3725

Clean and Seal..... MnDOT 3723 or MnDOT 3719

Sealants ..... Certified Sources for Hot-poured Sealants APL

**2331.3 CONSTRUCTION REQUIREMENTS**

Conduct a meeting inviting the Contractor, Subcontractors, and the Engineer prior to sealing the cracks. Discussion items include: the Traffic Control Plan, Contractor's documentation requirements, Contractor submittals, and material selection.

**A. Equipment Requirements**

Use a self-propelled pavement cutter capable of providing a cut of uniform depth and width for routing. The pavement cutter shall be capable of cutting the countersunk design configuration into the pavement expeditiously, with ease, and in a single pass.

Use an air compressor capable of producing a continuous stream of clean, dry air through the nozzle at 75 to 150 pounds per square inch and 125 cubic feet per minute minimum. The air compressor must be equipped with water and oil traps and must produce sufficient air volume and pressure to remove all debris from the crack (routed or not) and all adjacent Road surfaces in a safe manner such that the debris will not re-enter the crack prior to the sealing operation. Check and clear the traps used to remove moisture and oil at least once per day of production and replace when necessary.

The use of backpack blowers (leaf blowers) is not allowed.

The use of vacuum cleaning Equipment will be allowed after demonstrating to the Engineer that the vacuum Equipment can successfully clean the cracks.

Provide a heat lance capable of achieving a temperature of heated air at the exit orifice of 1,800°F and a discharge velocity of 3,000 cubic feet per second.

Use melting kettles equipped with double jacketed boilers with both agitation and recirculation systems capable of melting and applying the sealant through a pressure-fed hose and wand. The melter must be capable of starting at ambient temperature and bringing the sealant material to application temperature within one hour, while continuously agitating and recirculating the sealant. The melters must be equipped with automatic thermostatic controls and temperature gages to monitor the sealant temperature in the applicator lines and temperature of heat transfer oil in the kettle jacket.

Furnish an infrared temperature-measuring gun accurate to 1°F at 400°F for use by the Engineer. The Engineer will check the pouring temperature of the sealant at the point of discharge into the reservoir. If the sealant falls below the recommended application/pouring temperature, all production stops until the recommended application/pouring temperature is obtained. Should the sealant temperature at the point of discharge exceed the maximum safe heating temperature, empty the melting kettle of all sealant, and dispose of the sealant in an environmentally safe method.

## **B. Crack Repair**

Repair cracks in the Traffic Lanes, acceleration lanes, deceleration lanes, widened medians, median cross-over lanes, turning lanes, paved Shoulders, Ramps and all Auxiliary Lanes, unless noted as an exclusion in the Plans.

### **B1. Transverse cracks 3/4 inch or less in width**

Rout crack prior to placing sealant. The pavement cutter must cut the design reservoir in one easy pass. Change cutters when it is evident that the reservoir configuration specified is not being achieved in an easy and expeditious manner in accordance with design. Demonstrate the cutters capability of following meandering cracks and maintaining a centered reservoir over the crack +1/4 inches. The resulting reservoirs must have vertical sidewalls and a uniform horizontal profile. Cease production if requirements cannot be met until operations are modified to meet these requirements.

Route cracks in a manner that prevents damage to and interference with traffic in adjacent lanes.

### **B2. Transverse cracks greater than 3/4 inch and longitudinal cracks**

No routing is required.

## **C. Clean Cracks**

Thoroughly clean routed reservoirs or cracks with a minimum of one pass of the air wand not more than 2 inches from each face of the reservoir/crack. Cleaning continues until the reservoir/crack is dry and all

dirt, dust, vegetation, and other deleterious matter is removed. If the air compressor produces dirt or other residue, the Contractor will be required to re-clean the reservoir/crack.

Immediately prior to the placement of the crack sealant, condition the surface of both the sidewalls, as well as the pavement 1 inch on either side of their sidewalls with hot compressed air from a heat lance. This treatment continues until the affected areas are clean and dry. Do not scorch the routed reservoir, crack, or adjacent pavement surface. The Engineer reserves the right to randomly spot check the reservoirs/cracks to verify that they are clean and dry. Anytime the Engineer determines that this requirement is not being met, the Contractor stops production and modifies their operation to meet these requirements.

Clean cracks in a manner that prevents damage to and interference with traffic in adjacent lanes.

#### **D. Crack Sealing Operation**

Package and ship the crack sealant material in sealed containers. The containers of sealant must be clearly marked with the name of the manufacturer, the trade name of the sealant, weight, the manufacturer's batch and lot number, the application/pouring temperature, and the safe heating temperature.

Do not exceed the safe heating temperature as recommended by the manufacturer in the field. Reject and safely dispose of any sealant heated above the safe heating temperature.

Do not place sealant if the temperature of the material is below the manufacturer's recommended minimum application/pouring temperature.

Mixing of different manufacturer's brands or different types of sealants is prohibited. Reject and safely dispose of sealant if it has been mixed with multiple brands or sealant types.

##### **D1. Field Sampling**

Obtain a sample from the application wand during the first 20 minutes of placing sealant from each melter on the Project in the presence of the Engineer.

Furnish the Engineer with one sample for each lot of sealant used on the Project. The Engineer reserves the right to obtain a second sample of sealant from the Contractor for each lot of sealant.

Each sample consists of two Teflon or silicone lined boxes with the capacity to hold 5 pounds of sealant.

Label the two sampling boxes with SP number, date, time, location, manufacturer and lot number of the sealant.

The Engineer may randomly pick the time and date of the second sampling per lot of sealant. Document the locations where the material from each lot number of sealant is placed, and submit this documentation to the Engineer daily.

##### **D2. Submittal Requirements**

Submit a copy of the manufacturer's recommendations pertaining to the heating and re-heating and application of the joint sealant material to the Engineer prior to the commencement of the Work and follow the recommendations.

Submit manufacturer's certification that the sealant Materials meet the requirements of this Special Provision.

Submit melting kettle production data sheets daily for each kettle on the Project with the following information:

1. SP number, control section and route number.

2. Date, ambient air temperature (°F) at the beginning of the shift, mid-day and end of shift.
3. Sealant material temperature at the wand once an hour during working production.
4. Beginning and ending locations on Project for the day, including lane and direction.
5. The amount of Materials used for the day in pounds, including lot numbers.
6. Sample(s) taken with Project location recorded.
7. Unique or atypical situations on the Project that may affect the placement or performance of the sealed crack.
8. The Contractor's authorized signature.
9. Material certification.
10. Material test samples.

### D3. General Requirements

Place the crack sealant immediately after the completion of the cleaning and conditioning operation.

Seal Cracks when the sealant material is at the application/pouring temperature recommended by the manufacturer. Do not exceed the safe heating temperature as recommended by the manufacturer. Reject and safely dispose of any sealant heated above the safe heating temperature.

Do not place sealant if the temperature of the material is below the manufacturer's recommended minimum application/pouring temperature.

Fill the transverse reservoirs by the use of the double fill method. (Note: The Contractor may need to use additional passes when filling the reservoir/crack to meet the double fill requirement). Fill the reservoir such that the final level is flush with the pavement surface and spread uniformly over the entire length of the crack. The width of the overband, including the routed reservoir, shall be 2-1/2 inches wide with a film thickness limited to 1/8 inch. The Contractor may be required to use a squeegee to force the sealant material into narrow cracks, if the sealant material is not flowing into the crack properly.

Repair longitudinal cracks using the Clean and Seal method using an application wand followed by a "V" shaped squeegee, a round application head having a concave underside, or other methods that meets the requirements for size and shape. Three inches is the maximum allowable width of the application for standard coverage. The maximum film thickness of the overband is limited to 1/8 inch.

The final appearance must be neat, clean, and free from pools of excess sealant material and streaked sealant outside of the sealed cracks. Return the applicator wand to the machine and re-circulate the sealant material immediately upon completion of each crack sealing.

Apply toilet paper, a light coating of sand, or other approved de-tacking agent to the surface of the newly placed sealant if traffic results in tracking of the crack sealing material. Repair any damage to treated pavement areas caused by traffic. If the existing pavement markings are obliterated as a result of the crack treatment Work, place temporary pavement markings before the Roadway is opened to traffic.

Mixing of different manufacturer's brands or different types of sealants is prohibited. Reject and safely dispose of sealant if it has been mixed with multiple brands or sealant types.

Clean and remove all debris by the end of the workday. At all times, operate in a manner that is not harmful to the public at large or the Engineering and Labor Forces involved on the Project Site.

Record the required information on the melting kettle production data sheets as required during the actual working operations. Present the completed sheets to the Engineer at the end of each day's production.

The Engineer intermittently will review the sealant temperatures at the melting kettle during crack sealing operations. If the temperatures are above the manufacturer's specified safe heating temperature, reject the material and dispose of in an environmentally safe method.

The Engineer will observe each crack for acceptable workmanship, whether sealed by the 'Rout and Seal' or 'Clean and Seal' method. The Engineer will bring unsealed cracks to the attention of the Contractor.

The Contractor will fill all unsealed cracks prior to opening the Roadway to traffic.

#### D4. Weather Limitations

Place sealant Materials only during a period of rising temperature after the air and surface temperature in the shade and away from artificial heat sources has reached 50°F and indications are for a continued rise in temperature. If the temperatures may fall below 50°F, suspend placement of the sealant material.

Do not place sealant material if it is raining or the pavement is wet. If the sealant is placed and is rained on before the sealant has properly cured, remove and replace the wet/contaminated sealant.

Place sealants when favorable weather conditions are expected.

Complete crack sealing Work in the Northern and North-Central Seasonal Load Limit zone before September 16. Complete crack sealing Work in all other Seasonal Load Limit zones before October 1.

#### D5. Workmanship

Sealed cracks shall be rejected if there is evidence of poor workmanship or obvious defects, such as, but not limited to the following:

- Routed reservoir not filled completely, flush with pavement surface.
- Lack of bond to the sidewalls of the joint reservoir or crack.
- Excessive debris or moisture in the joint reservoir or crack.
- Contamination of the sealant.
- Excessive pools of sealant on the pavement or shoulder surface.
- Excessively wide, thick sealant overband.

Rejected sealed cracks shall be repaired, the sealant removed and disposed of in a legal and appropriate manner and the cracks resealed as necessary.

#### D6. Final Clean-Up

Before opening the road to traffic, remove any additional debris left on the roadway after the sealant has been placed and cured. The method used to complete this work must not damage the newly placed sealant. Clean up may require sweeping as directed by the engineer. Repair any damage to sealant resulting from clean-up operations.

### 2331.4 METHOD OF MEASUREMENT

Crack cleaning and sealing will be measured by the pound (LB) of sealant material used. The manufacturers' weights of the material will be accepted as the basis for the measurement.

### 2101.5 BASIS OF PAYMENT

Rout & Seal Bituminous Pavement Cracks shall be paid for at the unit price bid per pound and include costs of labor, and materials to rout or clean based on the specifications, placement of backer rod if necessary, sealing the cracks, and final cleanup and sweeping, if required.

Payment will be made based on the following schedule:

<u>Item No.</u>	<u>Item</u>	<u>Unit</u>
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**2355 BITUMINOUS FOG SEAL**  
**INITIAL 03/28/25**

The provisions of MnDOT 2355 are modified and/or supplemented as follows:

**2355.1 DESCRIPTION**

Delete and replace item 2355.2A.1 with the following:

- A.1 CSS-1hD50.....3151.2D.1.a
- A.2 CRS-2Pd ..... 3151.2E.2
- A.3 CQS-1hD30.....3151.2D.2b

**2355.2 MATERIALS**

Delete and replace Table 2355.3-1 of 2355.3C, “Application of Bituminous Material,” with the following:

**Table 2355.3-1  
 Fog Seal Application Rates**

Application Rates – gallons/square yard		
CSS-1hD50	CRS-2Pd	CQS-1hD30
0.05 to 0.20	0.05 to 0.20	0.06 to 0.14

**2355.4 CONSTRUCTION REQUIREMENTS**

Delete and replace Table 2355.3-2 of 2355.3C, “Application of Bituminous Material,” with the following:

**Table 2355.3-2  
 Fog Seal Application Temperatures**

Bituminous Material	Minimum Temperature	Ideal Temperature
CRS-2Pd	140°F	170°F – 180°F
CSS-1hD50	100°F	100°F – 140°F
CQS-1hD30	140°F	170°F – 180°F

**2355.5 BASIS OF PAYMENT**

Fog sealing shall be paid for at the unit price bid per gallon. Payment includes all costs of labor, equipment, and materials to complete the work as specified.

Payment will be made based on the following schedule:

<u>Item No.</u>	<u>Item</u>	<u>Unit</u>
2355.506	BITUMINOUS MATERIAL FOR FOG SEAL	GAL

**2356 BITUMINOUS SEAL COAT**

The provisions of MnDOT 2356 are modified and/or supplemented as follows:

**2356.1 DESCRIPTION**

The work consists of applying bituminous material, a single layer of aggregate, and a fog seal on a prepared surface as identified in the Plans.

The work also consists of applying an emulsified maltene-based asphalt rejuvenating agent to bituminous surface courses as identified in the Plans.

## 2356.2 MATERIALS

### A Bituminous Material

CRS-2P per MnDOT 3151.2E.2.

### B Seal Coat Aggregate

FA-2 Class A per MnDOT 3127.2-1 and 3127.2-2. Aggregate shall be dresser trap rock.

### D Seal Coat Design

FA-2 aggregate shall be applied at a rate of 16-20 pounds per square yard with 0.26-0.30 gallons per square yard of CRS-2P bituminous material.

Bituminous seal coat material shall be applied at a rate as directed by the Engineer. Application rates will be determined based on the condition of each area to be sealed.

Provide the following to the Engineer at least 2 weeks before beginning construction:

- (1) Gradation and quality test results as specified in 3127.3, "Sampling and Testing"
- (2) 150-pound sample of Aggregate from each proposed Aggregate source

The Contractor cannot start work until submittal of the design and approval by the Engineer in accordance with the requirements of this section.

## 2356.4 CONSTRUCTION REQUIREMENTS

### A Weather, Time and Date Limitations

#### A.1 Bituminous Seal Coat

In general, seal coat operations shall be conducted only during daylight hours when the air temperature is between 60-95 degrees Fahrenheit and the road surface is damp to dry. The Engineer shall determine each day's starting time based upon these conditions.

## 2356.5 BASIS OF PAYMENT

The Contract gallon price for accepted quantities of Bituminous Material for seal coat, including necessary additives, includes the costs of providing and applying the Material as required by the Contract.

The Contract square yard Unit Price for Bituminous seal coat includes the cost of providing and applying the Material as required by the Contract. The Contract square yard price for Bituminous seal coat includes the cost of all applied Aggregate and all testing.

Payment will be made based on the following schedule:

<u>Item No.</u>	<u>Item</u>	<u>Unit</u>
2356.504	BITUMINOUS SEAL COAT	S Y
2356.506	BITUMINOUS MATERIAL FOR SEAL COAT	GAL

## 2563 TRAFFIC CONTROL

### 2563.1 DESCRIPTION

Furnish, install, maintain, and remove all traffic control devices required to provide safe movement of traffic and pedestrians through the Project at all times from commencement of the Work until project acceptance. Do not close roads or pedestrian facilities, except as authorized. The Engineer may modify the requirements for traffic control as deemed necessary.

All temporary traffic management must conform to and be installed in accordance with:

- the “Minnesota Manual on Uniform Traffic Control Devices” (MN MUTCD);
- the “Minnesota Temporary Traffic Control Field Manual” (Field Manual);
- the “Speed Limits in Work Zone Guidelines”;
- the “Minnesota Flagging Handbook”;
- the “MnDOT Standard Signs and Markings Manual”;
- the Plan; and
- all applicable standard Specifications and Special Provisions.

Manuals listed above may be found at: <http://www.dot.state.mn.us/trafficeng/publ/index.html>.

## **2563.2 MATERIALS**

### **A. Temporary Signs and Devices**

Reflectorize all signs, paddles, and other traffic control devices including those used for daytime operations. Fabricate temporary rigid signs and devices with retroreflective sheeting material of the appropriate color listed on the Approved Products List (APL) for either “Sheeting for Rigid Temporary Work Zone Signs, Delineators, and Markers (Type IX and XI)” or “Sheeting for Rigid Permanent Signs, Delineators, and Markers (Type IX and XI)”. The sheeting Materials APL is located at the following link: <http://www.dot.state.mn.us/products/signing/sheeting.html>.

Inplace signs that still apply during temporary operations need no change in sign sheeting.

### **B. Truck/Trailer Mounted Attenuators**

The Approved Products List for “Mobile Crash Attenuators” is found at: <http://www.dot.state.mn.us/products/temporarytrafficcontrol/mobilecrashattenuators.html>.

### **C. Crashworthy Signs, Traffic Control Devices, and Ballast**

Ground mounted signs and traffic control devices must be crashworthy and meet the crash testing requirements of the AASHTO Manual for Assessing Safety Hardware 2016 (MASH-16). The Owner may require a letter of compliance stating that all signs and traffic control devices comply with MASH-16 requirements. The Letter of Compliance must include drawings of the different signs and devices along with a copy of the FHWA issued Letter of Eligibility or MnDOT MASH Crashworthy Evaluation.

Temporary portable sign supports may meet crashworthiness requirements of NCHRP 350 or MASH-16. The approved ballast system for signs and devices mounted on temporary portable supports is sandbags, unless it is designed, crash tested, and approved for the specific device. Add a deicer during freezing conditions to prevent the sand from freezing. Place sandbags at the base of the sign or traffic control device. Do not use any ballast that causes a sign or traffic control device to become hazardous to motorists or workers.

Trailer mounted devices are not crash tested and must be delineated when deployed and removed when not needed.

## **2563.3 CONSTRUCTION REQUIREMENTS**

Road Work Begins Notice Signs (G20-X1) shall be installed seven calendar days prior to the anticipated start of Work for all roads that will be impacted by construction longer than seven days.

## **A. Traffic Control Plan, Maintenance, and Inspection**

Submit a proposed traffic control plan to the Engineer for acceptance, at least seven days before implementation. If Field Manual layouts are used, specify layout number(s) but do not submit the layouts from the Field Manual. Do not implement the proposed traffic control until accepted by the Engineer.

Immediately repair or replace all traffic control devices that become damaged, moved, or destroyed, and all ballasts that are damaged, destroyed, or otherwise fail to stabilize the device.

Meet the traffic control device quality standards as required in the Field Manual. Immediately replace unacceptable traffic control devices. Signs that are dirty and result in a noticeable loss of reflectivity at night are considered unacceptable and must be cleaned or replaced. Respond promptly to any call from the Engineer concerning the notification of unacceptable traffic control devices.

Provide the names, address, and phone numbers of at least three individuals responsible for placing and maintaining traffic control devices to the Engineer at the Pre-construction Conference. These individuals will be "on call" 24 hours per day, seven days per week during the times any temporary traffic control devices are in place.

Inspect all traffic control devices daily, including one nighttime inspection per week. Verify that the devices are placed in accordance with the Traffic Control Plan, these Special Provisions, and the MN MUTCD. Immediately correct discrepancies between the actual placement and the required placement. Respond immediately to any call from the Engineer concerning any request for improving or corrective traffic control devices.

## **B. Traffic Control Signs and Devices**

The Engineer may require extra traffic control devices in addition to the traffic control devices shown on the Plan or in the Field Manual.

Roll-up signs are not allowed unless authorized by the Engineer.

Cover, modify, or remove all signs that are not consistent with traffic operations. Cover the entire sign or that part of the legend that is inappropriate. Sign covers must conform to the Typical Temporary Sign Covering Detail Sheet found in the Plan or at the following link:

<http://www.dot.state.mn.us/trafficeng/workzone/wz-ltta/pdf/tempsigncover.pdf>

Maintain street identification signage at all times. Signs may be installed on temporary supports if the permanent sign Structures are affected by operations. This is necessary to maintain the 911 emergency system.

Post mount all signs that will remain in the same location for more than 30 consecutive days. This does not include portable signs which are set up and taken down at the beginning and end of each Work shift.

When the proper location of a sign is on pavement, do not core through the surface. If there is a conflict with underground utilities, attempt to move the sign while maintaining its visibility to traffic. If it is not possible to drive posts into the ground, mount signs on portable supports as approved by the Engineer.

When signs are removed, the sign posts and stub posts must also be removed from the Right-of-way. Posts left in place for future use or removal at a later date must be properly delineated with tubular markers, flags, or other delineation as approved by the Engineer at no additional cost.

All in place signs and delineators that interfere with the Contractor's normal operation may be temporarily relocated by the Contractor at the direction of the Engineer. Store salvaged signs in such a manner as to protect the sign from scratching, fading, or other harmful effects until the signs are reinstalled. After completing work at each sign location, or at the direction of the Engineer, replace the signs as near to their original location as possible or to a location designated by the Engineer. Reinstall sign Structures according to the Type C & D Sign Structural Details Sheet located at the following link:  
<http://www.dot.state.mn.us/trafficeng/signing/plansheets/groundmounted.pdf>

Signs and structures damaged by the Contractor shall be replaced at the Contractor's Expense.

### **C. Traffic Safety**

Do not suspend material, equipment, tools or personnel over lanes or pedestrian facilities open to traffic.

Protect traffic and pedestrians from excavations, drop-offs, falling objects, splatter or other potential construction hazards.

Do not store Materials or Equipment in the Work zone clear zone unless approved by the Engineer. If Materials or Equipment must be stored within the Work zone clear zone, protect with temporary barrier. If the Engineer agrees that temporary barrier is not practical, delineate with Type B channelizers.

Do not park vehicles or construction Equipment in the clear zone or any location that obstructs traffic control devices. Workers are not allowed to park their private vehicles within the Project limits unless approved by the Engineer.

### **D. High Visibility Apparel**

During night work or low light conditions, all workers must wear high visibility Class E long pants and retro-reflective headgear in addition to the ANSI Class 2 or 3 vest, shirt, or jacket.

All high visibility apparel must be worn in the manner for which it was designed. All apparel worn on the torso must be closed in the front to provide 360-degree visibility. A worker's high visibility apparel must be removed from service and replaced if it becomes faded, worn, torn, dirty, or defaced, reducing the conspicuity of the apparel.

### **E. Night Work**

Night work is not permitted on this project without prior approval of the Engineer.

### **F. Vehicle Warning Light Specification**

All vehicles and Equipment operating in the Right-of-way must have operable warning lights that are amber in color and meet the appropriate SAE specification. The SAE specification requirements are as follows:

- Optical Warning Devices for Authorized Emergency, Maintenance, and Service Vehicles – SAE Specification J845.
- Directional Flashing Optical Warning Devices for Authorized Emergency, Maintenance, and Service Vehicles – SAE Specification J595.

Details on SAE Specification can be found at: <http://www.dot.state.mn.us/const/wzs/lighting.html>.

### **G. Lane Closure Requirements**

Temporary lane closures or other traffic restrictions by the Contractor, during work hours and consistent with any time restrictions, will be permitted only during those hours and at those locations approved by the Engineer. Request temporary lane closures at least two Business Days prior to the closure.

Temporary lane closures will be permitted in accordance with the hours and number of lanes allowed as indicated in the Metro Lane Closure Manual; <http://www.dot.state.mn.us/metro/trafficeng/laneclosure/index.html>. Lane closures that cross segments as defined in the Manual shall follow the more restrictive limits.

Place traffic control devices in any temporary lane closure that is adjacent to traffic and extends beyond 1000 feet as shown on Layout 61 of the Field Manual. When the lane closure is in place for three days or longer, use only Type III barricades.

Use Drum Channelizers in all lane closure tapers and in any shifts in traffic alignment.

Maintain a minimum of two miles between temporary lane closures.

Temporary lane closures will not be permitted during inclement weather, nor any other time when, in the opinion of the Engineer, the lane closure will be a greater than normal hazard to traffic.

#### **H. Truck/Trailer Mounted Attenuators (TMAs) for Mobile/Short Duration Operations**

Truck/Trailer Mounted Attenuators (TMAs) must be used on all shadow and protection vehicles operating totally or partially in a traffic lane if any temporary traffic control zone is defined as “Mobile/Short Duration” by the Field Manual. All references to “should” in the Field Manual in regard to TMA use for Mobile/Short Duration layouts are hereby changed to “shall.” This requirement applies to all operations utilizing Field Manual layouts 9, 10, 12, 13, 36, 41, 49, 50, 51, 54, 55, 63, 76, 77, 78, and 79. Providing TMAs for “Mobile/Short Duration” work zones is incidental.

#### **I. Flagging Operations**

Flaggers and Pilot Drivers must attend a training session taught by a MnDOT-Qualified Flagger Trainer. The trainer must have completed a “MnDOT Flagger Train the Trainer Session” within the last five years and be on file as a qualified Trainer with MnDOT. Provide all flaggers with the MnDOT Flagging Handbook. Flaggers must be in possession of the handbook while flagging on the Project. Furnish the signed “Checklist for Flagger Training” or “Flagger Qualification Card” to the Engineer any time a new flagger reports to work on the Project. The “Checklist for Flagger Training” and other forms and information is found at: <http://www.dot.state.mn.us/const/wzs/flagger.html>.

Flaggers must be properly uniformed in the required high visibility apparel, including a high visibility hat. The high visibility hat can be substituted for a hard hat if the work site has a hard hat requirement.

All signs associated with the flagging operation must be removed or covered when flagging operations are not present.

Coordinate the flagging operations in a manner that causes minimum delay to the traveling public.

#### **J. Milling, Sealcoating, and Paving Operations**

When traffic is allowed to drive on the milled and newly paved surfaces, install interim striping and provide appropriate warning signs such as “GROOVED PAVEMENT” and “BUMP” with “Advisory Speed” plaques as shown on Layouts 35 and 66 of the Field Manual.

Taper and/or chamfer any drop-off where traffic will cross from or to the in-place surface, or from or to the milled surface, so as to provide the safe passage of traffic.

Schedule construction operations to minimize traffic exposure to uneven lanes, milled edges, and edge drop-offs. If these conditions cannot be avoided, provide and maintain the appropriate traffic control in accordance with the “LONGITUDINAL DROP OFF GUIDELINES” in the Field Manual.

Do not mill any notches for surfacing tapers until immediately prior to paving. The Engineer may allow notches if temporary bituminous is installed and maintained to provide for the safe passage of traffic until the surfacing is completed. Constructing and milling tapers and/or chamfers is incidental.

Maintain traffic with a minimum of delay during milling and paving operations at intersections controlled by signals or by all-way stop signs.

Intersecting Streets, other than Intersections controlled by signals or all-way stop signs, may be closed during milling and paving operations in the Intersection if there are adequate alternate routes for the intersecting Street traffic. Do not close adjacent intersecting Streets to traffic concurrently. Notify the local Road authorities of the schedule to close intersecting Streets 48 hours in advance of the closure.

When traffic is allowed to drive on the sealed surface, provide and install "LOOSE GRAVEL" and "FRESH OIL" signs with "Advisory Speed" plaques as shown on Layouts 35 and 66 of the Field Manual.

**K. Maintenance and Staging of Traffic Control**

Pedestrian traffic must be maintained and guided through the Project at all times.

**2563.4 METHOD OF MEASUREMENT**

All traffic control required to complete the project as shown in the Plans and as specified will be made as a lump sum payment under item 2563.601 (Traffic Control). Payment includes all costs associated with furnishing, installing, maintaining, relocating and subsequently removing traffic control devices (including flaggers) as required. No additional measurement for payment will be made for individual activities and devices that constitute Traffic Control, except for other traffic control Bid items specifically listed on the Bid Form.

Traffic Control layouts and devices not shown on the Plan or stated in these Specifications, which are necessary to facility traffic switches or for transitioning traffic from one stage to another, are included in the lump sum traffic control item.

If the Contractor fails to properly provide, install, maintain, or remove any of the required traffic control devices, the Owner may correct the deficiency and deduct the costs from any moneys due or becoming due to the Contractor in accordance with the General Conditions.

**2563.5 BASIS OF PAYMENT**

Partial payments for lump sum item 2563.601 (Traffic Control) will be made as follows:

<b>Table 2563.5-1 Traffic Control Partial Payments</b>	
<b>Percent of Original Contract Completed</b>	<b>Pay this Percentage of Traffic Control</b>
5	50
10	75
50	95
All work completed and all traffic control removed	100

Payment will be made based on the following schedule:

<u>Item No.</u>	<u>Item</u>	<u>Unit</u>
2563.601	TRAFFIC CONTROL	LS

**2582 PAVEMENT MARKINGS**

The provisions of MnDOT 2582 are modified and/or supplemented with the following:

**2582.1 DESCRIPTION**

Layout of all temporary and permanent pavement markings (striping) shall be the responsibility of the Contractor. The Owner will check and approve layout before application of pavement markings is allowed. Provide a minimum of two-business days notice for striping.

All striping shall be completed as soon as possible and within 48 hours after placement of the final lift (in accordance with manufacturers' requirements).

**2582.2 MATERIALS**

**2582.3 CONSTRUCTION REQUIREMENTS**

**A. Application**

Place necessary 'spotting' at appropriate points to provide horizontal control for striping and to determine necessary starting and cutoff points. Longitudinal joints, pavement edges and existing marking may serve as horizontal control when so directed. The Engineer's involvement in the application of the material shall be limited to field consultation and inspection.

**2582.5 BASIS OF PAYMENT**

Layout of pavement markings is incidental with no additional compensation allowed therefore.

Delete MnDOT 2582.5.A in its entirety.

**B. Schedule**

Payment will be made based on the following schedule:

<u>Item No.</u>	<u>Item</u>	<u>Unit</u>
2582.503	4" SOLID LINE PAINT	L F
2582.503	12" SOLID LINE PAINT	L F
2582.503	4" DBLE SOLID LINE PAINT	L F
2582.518	PAVT MSSG PAINT	S F
2582.518	CROSSWALK PAINT	S F

**APPENDIX A**  
**PROJECT MAP**

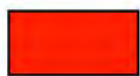
# City of Circle Pines



1 in = 550 Ft



SEAL COAT & FOG SEAL  
(24,000 SY)



SEAL COAT & FOG SEAL (2,800 SY)  
ROUTE AND SEAL CRACKS (1500 LF)

