

# City of Dayton



## Project Manual

### 4<sup>th</sup> & Kenton Drainage & Sidewalk Improvements Project

Dayton, Campbell County, Kentucky

#### NOTICE TO BIDDERS

**Bid Opening Date: June 3, 2022**

**Bid Opening Time: 10:00 AM**

**Address: 514 Sixth Avenue  
Dayton, KY 41074**



## **PROJECT MANUAL INDEX**

### **DIVISION 00 – BIDDING AND CONTRACT DOCUMENTS**

|           |                          |
|-----------|--------------------------|
| 001113    | Advertisement for Bids   |
| 002113    | Instructions to Bidders  |
| 004113    | Bid Form                 |
| 005100    | Notice of Award          |
| 005213    | Form of Agreement        |
| 005500    | Notice to Proceed        |
| 006113.13 | Performance Bond         |
| 006113.16 | Payment Bond             |
| 007200    | General Conditions       |
| 007300    | Supplementary Conditions |

### **TECHNICAL SPECIFICATIONS**

|            |                               |
|------------|-------------------------------|
| Section 1  | General Provisions            |
| Section 2  | Utility Coordination          |
| Section 3  | Construction Staking          |
| Section 4  | Excavation & Placement        |
| Section 5  | Concrete                      |
| Section 6  | Asphalt Pavements             |
| Section 7  | Maintenance of Traffic        |
| Section 8  | Erosion and Sediment Control  |
| Section 9  | Landscaping                   |
| Section 10 | Storm Drainage                |
| Section 11 | Roadway & Drainage Excavation |
| Section 12 | Final Cleanup                 |

### **APPENDIX**

|          |
|----------|
| Bid Bond |
|----------|

## SECTION 001113 – ADVERTISEMENT FOR BIDS

### 4<sup>th</sup> & KENTON DRAINAGE & SIDEWALK IMPROVEMENTS PROJECT

Sealed Bids will be received by the City of Dayton for the 4<sup>th</sup> & Kenton Drainage & Sidewalk Improvements Project. The scope of work includes storm sewer and sidewalk construction as described in the full summary of work and shown on the attachments. The project is located at the intersection of 4<sup>th</sup> Avenue and Kenton Street.

**Last Day for Questions shall be May 30, 2022 at 5 pm.**

**Last Addendum shall be issued on June 1, 2022 by 5 pm.**

**Contractors are encouraged to utilize local Vendors and Suppliers.**

Contract Documents may be examined at the following locations:

Dayton City Hall  
514 Sixth Avenue  
Dayton, KY 41074  
(859) 491-1600

PRIME AE Group, Inc.  
2101 Chamber Center Drive  
Fort Mitchell, KY 41017  
(859) 818-6687

Copies may be obtained from PRIME AE Group, Inc. (Mike Yeager – [myeager@primeeng.com](mailto:myeager@primeeng.com)). Partial sets of documents will not be provided.

Bids must be delivered to Attn: Donna Leger, CMC, City Clerk/Treasurer, City of Dayton, 514 Sixth Avenue, Dayton, KY 41074, on or before **10:00 AM** prevailing local time on Friday, **June 3, 2022**.

The City of Dayton (OWNER) reserves the right to waive any informalities or to reject any or all bids. This contract is considered a **Lump Sum Contract**. The Owner Reserves the Right to negotiate with apparent successful bidder as necessary to meet the needs of the Owner.

Small, local, minority and female-owned businesses are encouraged to participate.

Each BIDDER must deposit with his Bid, security in the amount, form and subject to the conditions provided in the Instructions to Bidders.

No BIDDER may withdraw his Bid within sixty (60) consecutive calendar days after the actual date of the opening thereof.

No price escalation during the time of the Construction Contract shall be considered.

Ben Baker, Mayor

“EQUAL EMPLOYMENT OPPORTUNITY”

## SECTION 002113 - INSTRUCTIONS TO BIDDERS

### TABLE OF CONTENTS

|  | <b>Page</b> |
|--|-------------|
| Article 1 – Defined Terms.....   | 1           |
| Article 2 – Copies of Bidding Documents.....                                     | 1           |
| Article 3 – Qualifications of Bidders .....                                      | 1           |
| Article 4 – Examination of Bidding Documents, Other Related Data, and Site ..... | 2           |
| Article 5 – Pre-Bid Conference.....  | 4           |
| Article 6 – Site and Other Areas .....   | 4           |
| Article 7 – Interpretations and Addenda.....                                     | 5           |
| Article 8 – Bid Security.....  | 5           |
| Article 9 – Contract Times .....   | 5           |
| Article 10 – Liquidated Damages .....  | 5           |
| Article 11 – Substitute and “Or-Equal” Items .....                               | 5           |
| Article 12 – Subcontractors, Suppliers and Others.....                           | 6           |
| Article 13 – Preparation of Bid .....  | 6           |
| Article 14 – Basis of Bid; Comparison of Bids .....                              | 7           |
| Article 15 – Submittal of Bid .....  | 7           |
| Article 16 – Modification and Withdrawal of Bid .....                            | 8           |
| Article 17 – Opening of Bids .....   | 8           |
| Article 18 – Bids to Remain Subject to Acceptance .....                          | 8           |
| Article 19 – Evaluation of Bids and Award of Contract .....                      | 8           |
| Article 20 – Contract Security and Insurance.....                                | 9           |
| Article 21 – Signing of Agreement.....   | 9           |



## **ARTICLE 1 – DEFINED TERMS**

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:

A. *Issuing Office* – The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered. Refer to Advertisement for Bids for Issuing Office.

## **ARTICLE 2 – COPIES OF BIDDING DOCUMENTS**

- 2.01 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the advertisement or invitation to bid may be obtained from the Issuing Office.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

## **ARTICLE 3 – QUALIFICATIONS OF BIDDERS**

- 3.01 To demonstrate Bidder's qualifications to perform the Work, within 5 business days of Owner's request, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below.
- A. Evidence of Bidder's authority to do business in the state where the Project is located.
- B. Bidder's state contractor license number, if applicable.
- C. Bidders Qualifications
1. Provide a list of required names and addresses of all persons interested in the foregoing Bid, as Principals.
  2. Provide a statement of qualifications for work of a similar character to that included in the proposed Contract and referenced to enable the Owner to judge the Bidder's experience, skill, and business standing.
- 3.02 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

## **ARTICLE 4 – EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE**

### **4.01   *Subsurface and Physical Conditions***

#### **A. The Supplementary Conditions identify:**

1. Those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site.
2. Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

#### **B. Copies of reports and drawings referenced in Paragraph 4.01.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions has been identified and established in Paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.**

### **4.02   *Underground Facilities***

#### **A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.**

### **4.03   *Hazardous Environmental Conditions***

#### **A. The Supplementary Conditions identify any reports and drawings known to Owner relating to a Hazardous Environmental Condition identified at the Site.**

#### **B. Copies of reports and drawings referenced in Paragraph 4.03.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.06 of the General Conditions has been identified and established in Paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.**

### **4.04   Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed**

at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 4.06 of the General Conditions.

- 4.05 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.
- 4.06 A. Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of contract documents (other than portions thereof related to price) for such other work.
- B. Paragraph 6.13.C of the General Conditions indicates that if an Owner safety program exists, it will be noted in the Supplementary Conditions.
- 4.07 It is the responsibility of each Bidder before submitting a Bid to:
- A. examine and carefully study the Bidding Documents, and the other related data identified in the Bidding Documents;
- B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work (no change order shall be considered for items visually observed on site);
- C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. carefully study all: reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in Paragraph 4.02 of the Supplementary Conditions as containing reliable "technical data";
- E. consider the information known to Bidder; 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 Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents 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, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs;

- F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
  - G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
  - H. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
  - I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

## **ARTICLE 5 – PRE-BID CONFERENCE**

- 5.01 There will not be a pre-Bid conference for this project.

## **ARTICLE 6 – SITE AND OTHER AREAS**

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

## **ARTICLE 7 – INTERPRETATIONS AND ADDENDA**

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than seven days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

## **ARTICLE 8 – BID SECURITY**

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price and in the form of a certified check, bank money order, or a Bid bond (on the form attached) issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions.
- 8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.
- 8.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

## **ARTICLE 9 – CONTRACT TIMES**

- 9.01 The number of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

## **ARTICLE 10 – LIQUIDATED DAMAGES**

- 10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

## **ARTICLE 11 – SUBSTITUTE AND "OR-EQUAL" ITEMS**

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or those substitute or "or-equal" materials and equipment approved by Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed

substitute or “or-equal” item. No item of material or equipment will be considered by Engineer as a substitute or “or-equal” unless written request for approval has been submitted by Bidder and has been received by Engineer at least 10 days prior to the date for receipt of Bids. Each such request shall conform to the requirements of Paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Bidder shall present an affidavit from manufacturer certifying that product complies therewith. Where requested or specified, submit supporting test data to substantiate. Engineer’s decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

## **ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS AND OTHERS**

- 12.01 The apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of all Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid.
- 12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.
- 12.03 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.

## **ARTICLE 13 – PREPARATION OF BID**

- 13.01 The Bid Form is included with the Bidding Documents.
- 13.02 All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each item listed therein. In the case of optional alternatives, the words “No Bid,” “No Change,” or “Not Applicable” may be entered.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.

- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.06 A Bid by an individual shall show the Bidder's name and official address.
- 13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.08 All names shall be printed in ink below the signatures.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.10 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

#### **ARTICLE 14 – BASIS OF BID; COMPARISON OF BIDS**

##### **14.01 *Lump Sum***

- A. Bidders shall submit a Bid on a lump sum basis as set forth in the Bid Form.

##### **14.02 *Allowances***

- A. For allowances, the Bid price shall include such amounts as the Bidder deems proper for Contractor's overhead, costs, profit, and other expenses on account of allowances, if any, named in the Contract Documents, in accordance with Paragraph 11.02.B of the General Conditions.

#### **ARTICLE 15 – SUBMITTAL OF BID**

- 15.01 See Paragraph 7.01 of the Bid Form for a list of required documents to be submitted with the Bid.
- 15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title, the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the

notation "BID ENCLOSED." A mailed Bid shall be addressed to Donna Leger, CMC, City Clerk/Treasurer, City of Dayton, 514 Sixth Avenue, Dayton, KY 41074.

## **ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID**

- 16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 16.02 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, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

## **ARTICLE 17 – OPENING OF BIDS**

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

## **ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

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

## **ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT**

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



proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.

- 19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work in accordance with the Contract Documents.
- 19.06 If the Contract is to be awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Project.

## **ARTICLE 20 – CONTRACT SECURITY AND INSURANCE**

- 20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bonds.

## **ARTICLE 21 – SIGNING OF AGREEMENT**

- 21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement along with the other Contract Documents (except Drawings) which are identified in the Agreement as attached thereto. Within 15 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within 10 days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder.

## **SECTION 004113 - BID FORM**

4<sup>th</sup> & Kenton Drainage & Sidewalk Improvements Project

## TABLE OF CONTENTS

|  | <b>Page</b> |
|--|-------------|
| Article 1 – Bid Recipient.....             | 1           |
| Article 2 – Bidder’s Acknowledgements..... | 1           |
| Article 3 – Bidder’s Representations ..... | 1           |
| Article 4 – Bidder’s Certification.....    | 2           |
| Article 5 – Basis of Bid .....             | 3           |
| Article 6 – Time of Completion .....       | 4           |
| Article 7 – Attachments to This Bid .....  | 4           |
| Article 8 – Defined Terms.....             | 4           |
| Article 9 – Bid Submittal.....             | 5           |

**ARTICLE 1 – BID RECIPIENT**

1.01 This Bid is submitted to:

Donna Leger, CMC, City Clerk/Treasurer  
City of Dayton  
514 Sixth Avenue  
Dayton, KY 41074

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

**ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS**

2.01 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.

**ARTICLE 3 – BIDDER’S REPRESENTATIONS**

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

| <u>Addendum No.</u> | <u>Addendum Date</u> |
|---------------------|----------------------|
| _____               | _____                |
| _____               | _____                |
| _____               | _____                |
| _____               | _____                |
| _____               | _____                |

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in SC-4.02.

- E. Bidder has considered the information known to Bidder; 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 Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents 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, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

#### **ARTICLE 4 – BIDDER'S CERTIFICATION**

##### **4.01 Bidder certifies that:**

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

## ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents. The following lump sum and/or unit prices indicated by Bidder below shall be used for all additions, deletions, and revisions to the Contract, as necessary.

| Item No. | Description                           | Unit | Estimated Quantity | Bid Unit Price | Bid Price |
|----------|---------------------------------------|------|--------------------|----------------|-----------|
| 1.       | Mobilization                          | LS   | 1                  | \$             | \$        |
| 2.       | Demobilization                        | LS   | 1                  | \$             | \$        |
| 3.       | Bonds/Insurance                       | LS   | 1                  | \$             | \$        |
| 4.       | Erosion Prevention & Sediment Control | LS   | 1                  | \$             | \$        |
| 5.       | Construction Staking                  | LS   | 1                  | \$             | \$        |
| 6.       | Traffic Control                       | LS   | 1                  | \$             | \$        |
| 7.       | Demolition                            | LS   | 1                  | \$             | \$        |
| 8.       | 4 ½” Concrete Sidewalk                | SY   | 90                 | \$             | \$        |
| 9.       | Header Curb                           | LF   | 85                 | \$             | \$        |
| 10.      | 2” Asphalt Surface                    | TON  | 15                 | \$             | \$        |
| 11.      | 6” Concrete Cap                       | SY   | 95                 | \$             | \$        |
| 12.      | Edge Key                              | LF   | 400                | \$             | \$        |
| 13.      | Detectable Warnings                   | SF   | 72                 | \$             | \$        |
| 14.      | SD-1 Standard Manhole                 | EA   | 2                  | \$             | \$        |
| 15.      | KYTC CBI Type 11                      | EA   | 3                  | \$             | \$        |
| 16.      | SD-1 Trapped Catch Basin              | EA   | 4                  | \$             | \$        |
| 17.      | 15” Storm Sewer Pipe                  | LF   | 85                 | \$             | \$        |
| 18.      | Remove and Relocate Stop Sign         | EA   | 2                  | \$             | \$        |

Bidder acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids. All specified allowances are included in the price set forth above and are in accordance with Paragraph 11.02 of the General Conditions.

Unit prices for lump sum items shall be based upon the Bidder’s take-off.

Total LUMP SUM BID AMOUNT: \_\_\_\_\_  
 \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

## **ARTICLE 6 – TIME OF COMPLETION**

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

## **ARTICLE 7 – ATTACHMENTS TO THIS BID**

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security in the form of certified check, bank money order, or Bid Bond;
  - B. List of Proposed Subcontractors;
  - C. List of Proposed Suppliers;
  - D. List of Project References;
  - E. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
  - F. Contractor's License No.: \_\_\_\_\_ *[or]* Evidence of Bidder's ability to obtain a State Contractor's License and a covenant by Bidder to obtain said license within the time for acceptance of Bids (if applicable); and
  - G. Required Bidder Qualification Statement with Supporting Data.

## **ARTICLE 8 – DEFINED TERMS**

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

## ARTICLE 9 – BID SUBMITTAL

9.01 This Bid is submitted by:

If Bidder is:

### An Individual

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

By: \_\_\_\_\_  
(Individual's signature)

Doing business as: \_\_\_\_\_

### A Partnership

Partnership Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of general partner -- attach evidence of authority to sign)

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

### A Corporation

Corporation Name: \_\_\_\_\_ (SEAL)

State of Incorporation: \_\_\_\_\_

Type (General Business, Professional, Service, Limited Liability): \_\_\_\_\_

By: \_\_\_\_\_  
(Signature -- attach evidence of authority to sign)

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

Title: \_\_\_\_\_  
(CORPORATE SEAL)

Attest \_\_\_\_\_

Date of Qualification to do business in Kentucky is \_\_\_\_/\_\_\_\_/\_\_\_\_.



Bidder's Business Address \_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

E-mail \_\_\_\_\_

SUBMITTED on \_\_\_\_\_, 20\_\_\_\_.

State Contractor License No. \_\_\_\_\_. *[If applicable]*

## SECTION 005100 - NOTICE OF AWARD

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

Project: 4<sup>th</sup> & Kenton Drainage & Sidewalk Improvements

Owner: City of Dayton

Owner's Contract No.:

Contract:

Engineer's Project No.:

Bidder:

Bidder's Address: *[send Notice of Award Certified Mail, Return Receipt Requested]*

You are notified that your Bid dated \_\_\_\_\_ for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for Second Street Streetscape.

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

2 copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

You must comply with the following conditions precedent within [15] days of the date you receive this Notice of Award.

1. Deliver to the Owner 1 fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security [Bonds] as specified in the Instructions to Bidders (Article 20) and General Conditions (Paragraph 5.01).

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

\_\_\_\_\_  
Owner

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

\_\_\_\_\_  
Title

Copy to Engineer

## SECTION 005213 - FORM OF AGREEMENT

THIS AGREEMENT is by and between City of Dayton (“Owner”) and  
 (“Contractor”).

Owner and Contractor hereby agree as follows:

## ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Storm sewer and sidewalk construction at the intersection of 4<sup>th</sup> Avenue and Kenton Street.

## ARTICLE 2 – THE PROJECT

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

## 4<sup>th</sup> & Kenton Drainage & Sidewalk Improvements

## ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by PRIME AE Group, Inc. (Engineer), which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

## ARTICLE 4 – CONTRACT TIMES

- #### 4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- #### 4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed within 60 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 75 days after the date when the Contract Times commence to run.

#### 4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$250 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$250 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

### **ARTICLE 5 – CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

- A. For all Work other than Unit Price Work, a lump sum of: \$\_\_\_\_\_

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

### **ARTICLE 6 – PAYMENT PROCEDURES**

#### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

#### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment. Signed Payment Applications should be submitted to Donna Leger by email. Payment is made in accordance with Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
  - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
  - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

#### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

### **ARTICLE 7 – NOT USED**

### **ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions.

- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### **9.01    *Contents***

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to 7, inclusive).
  - 2. Performance bond (pages 1 to 3, inclusive).
  - 3. Payment bond (pages 1 to 3, inclusive).
  - 4. General Conditions (pages 1 to 59, inclusive).
  - 5. Supplementary Conditions (pages 1 to 2, inclusive).
  - 6. Specifications as listed in the table of contents of the Project Manual.
  - 7. Drawings consisting of 10 sheets with each sheet bearing the following general title: 4<sup>th</sup> & Kenton Drainage & Sidewalk Improvements.
  - 8. Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - 9. Exhibits to this Agreement (enumerated as follows):

- a. Contractor's Bid (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - b. Documentation submitted by Contractor prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
- a. Notice to Proceed (pages 1 to 1, inclusive).
  - b. Work Change Directives.
  - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### **10.01 *Terms***

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### **10.02 *Assignment of Contract***

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

### **10.03 *Successors and Assigns***

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

#### 10.04 *Severability*

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

#### 10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.



IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR

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

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

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

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

(If Contractor is a corporation or partnership,  
attach evidence of authority to sign.)

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

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

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

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_

(Where applicable)

(If Owner is a corporation, attach evidence  
of authority to sign. If Owner is a public body,  
attach evidence of authority to sign and resolution  
or other documents authorizing execution  
of this Agreement.)

Agent for service of process:

\_\_\_\_\_

## SECTION 005500 - NOTICE TO PROCEED

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

Project: 4<sup>th</sup> & Kenton Drainage & Sidewalk Improvements

Owner: City of Dayton

Owner's Contract No.:

Contract:

Engineer's Project No.:

Contractor:

Contractor's Address: *[send Certified Mail, Return Receipt Requested]*

You are notified that the Contract Times under the above Contract will commence to run on \_\_\_\_\_. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the number of days to achieve Substantial Completion is 60, and the number of days to achieve readiness for final payment is 75.

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds and loss payees) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must:

\_\_\_\_\_ *[add other requirements]*.

Owner

Given by:

Authorized Signature

Title

Date

Copy to Engineer

## SECTION 006113.13 - PERFORMANCE BOND

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

---

CONTRACTOR (*Name and Address*):                      SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

City of Dayton  
514 Sixth Avenue  
Dayton, KY 41074

### CONTRACT

Effective Date of Agreement:  
Amount:  
Description (*Name and Location*):

### BOND

Bond Number:  
Date (*Not earlier than Effective Date of Agreement*):  
Amount:  
Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

### CONTRACTOR AS PRINCIPAL

### SURETY

\_\_\_\_\_  
Contractor's Name and Corporate Seal

\_\_\_\_\_  
Surety's Name and Corporate Seal

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

By: \_\_\_\_\_  
Signature (Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

*Note: Provide execution by additional parties, such as joint venturers, if necessary.*

Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.

1. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.
2. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
  - 2.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
  - 2.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
  - 2.3 Owner has agreed to pay the Balance of the Contract Price to:
    1. Surety in accordance with the terms of the Contract; or
    2. Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.
3. When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:
  - 3.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
  - 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
  - 3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
  - 3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
    1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
    2. Deny liability in whole or in part and notify Owner citing reasons therefor.
4. If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
5. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

- 5.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
- 5.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and
- 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.

6. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.

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

8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located, and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

9. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

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

#### 11. Definitions.

- 11.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
- 11.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 11.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 11.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – *(Name, Address and Telephone)*

Surety Agency or Broker:

Owner's Representative *(Engineer or other party)*:

## SECTION 006113.16 - PAYMENT BOND

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

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*):

City of Dayton  
514 Sixth Avenue  
Dayton, KY 41074

### CONTRACT

Effective Date of Agreement:

Amount:

Description (*Name and Location*):

### BOND

Bond Number:

Date (*Not earlier than Effective Date of Agreement*):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

### CONTRACTOR AS PRINCIPAL

### SURETY

\_\_\_\_\_  
Contractor's Name and Corporate Seal

\_\_\_\_\_  
Surety's Name and Corporate Seal

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

By: \_\_\_\_\_  
Signature (Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

*Note: Provide execution by additional parties, such as joint venturers, if necessary.*

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with Contractor:
    1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
    2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
    3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:
  - 6.1 Send an answer to that Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2 Pay or arrange for payment of any undisputed amounts.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.

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

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

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

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

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

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

#### 15. Definitions

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

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

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

FOR INFORMATION ONLY – (*Name, Address, and Telephone*)

Surety Agency or Broker:

Owner's Representative (*Engineer or other*):



## SECTION 007200 - GENERAL CONDITIONS

### TABLE OF CONTENTS

|  | Page |
|--|------|
| Article 1 – Definitions and Terminology .....  | 1    |
| 1.01 Defined Terms.....  | 1    |
| 1.02 Terminology.....  | 5    |
| Article 2 – Preliminary Matters.....   | 6    |
| 2.01 Delivery of Bonds and Evidence of Insurance.....  | 6    |
| 2.02 Copies of Documents.....  | 6    |
| 2.03 Commencement of Contract Times; Notice to Proceed .....   | 6    |
| 2.04 Starting the Work.....  | 6    |
| 2.05 Before Starting Construction .....  | 7    |
| 2.06 Preconstruction Conference; Designation of Authorized Representatives .....   | 7    |
| 2.07 Initial Acceptance of Schedules .....   | 7    |
| Article 3 – Contract Documents: Intent, Amending, Reuse.....   | 8    |
| 3.01 Intent.....   | 8    |
| 3.02 Reference Standards .....   | 8    |
| 3.03 Reporting and Resolving Discrepancies .....   | 8    |
| 3.04 Amending and Supplementing Contract Documents .....   | 9    |
| 3.05 Reuse of Documents .....  | 9    |
| 3.06 Electronic Data.....  | 10   |
| Article 4 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental<br>Conditions; Reference Points ..... | 10   |
| 4.01 Availability of Lands .....   | 10   |
| 4.02 Subsurface and Physical Conditions .....  | 10   |
| 4.03 Differing Subsurface or Physical Conditions.....  | 11   |
| 4.04 Underground Facilities .....  | 12   |
| 4.05 Reference Points .....  | 13   |
| 4.06 Hazardous Environmental Condition at Site.....  | 13   |
| Article 5 – Bonds and Insurance .....  | 15   |
| 5.01 Performance, Payment, and Other Bonds .....   | 15   |
| 5.02 Licensed Sureties and Insurers .....  | 16   |
| 5.03 Certificates of Insurance .....   | 16   |
| 5.04 Contractor’s Insurance.....   | 16   |
| 5.05 Owner’s Liability Insurance .....   | 18   |
| 5.06 Property Insurance .....  | 18   |
| 5.07 Waiver of Rights .....  | 19   |
| 5.08 Receipt and Application of Insurance Proceeds .....   | 20   |
| 5.09 Acceptance of Bonds and Insurance; Option to Replace.....   | 20   |
| 5.10 Partial Utilization, Acknowledgment of Property Insurer .....   | 21   |
| Article 6 – Contractor’s Responsibilities .....  | 21   |
| 6.01 Supervision and Superintendence .....   | 21   |

|   |   |    |
|---|---|----|
| 6.02  | Labor; Working Hours.....   | 21 |
| 6.03  | Services, Materials, and Equipment.....   | 21 |
| 6.04  | Progress Schedule .....   | 22 |
| 6.05  | Substitutes and “Or-Equals” .....   | 22 |
| 6.06  | Concerning Subcontractors, Suppliers, and Others .....                          | 24 |
| 6.07  | Patent Fees and Royalties .....   | 26 |
| 6.08  | Permits.....  | 26 |
| 6.09  | Laws and Regulations.....   | 26 |
| 6.10  | Taxes .....   | 27 |
| 6.11  | Use of Site and Other Areas .....   | 27 |
| 6.12  | Record Documents.....   | 28 |
| 6.13  | Safety and Protection .....   | 28 |
| 6.14  | Safety Representative .....   | 29 |
| 6.15  | Hazard Communication Programs .....   | 29 |
| 6.16  | Emergencies .....   | 29 |
| 6.17  | Shop Drawings and Samples .....   | 29 |
| 6.18  | Continuing the Work .....   | 31 |
| 6.19  | Contractor’s General Warranty and Guarantee.....                                | 31 |
| 6.20  | Indemnification .....   | 32 |
| 6.21  | Delegation of Professional Design Services .....                                | 32 |
| Article 7 – Other Work at the Site.....                 |   | 33 |
| 7.01  | Related Work at Site .....  | 33 |
| 7.02  | Coordination.....   | 34 |
| 7.03  | Legal Relationships.....  | 34 |
| Article 8 – Owner’s Responsibilities .....              |   | 34 |
| 8.01  | Communications to Contractor.....   | 34 |
| 8.02  | Replacement of Engineer.....  | 34 |
| 8.03  | Furnish Data .....  | 35 |
| 8.04  | Pay When Due .....  | 35 |
| 8.05  | Lands and Easements; Reports and Tests .....                                    | 35 |
| 8.06  | Insurance .....   | 35 |
| 8.07  | Change Orders.....  | 35 |
| 8.08  | Inspections, Tests, and Approvals .....   | 35 |
| 8.09  | Limitations on Owner’s Responsibilities .....                                   | 35 |
| 8.10  | Undisclosed Hazardous Environmental Condition.....                              | 35 |
| 8.11  | Evidence of Financial Arrangements .....  | 35 |
| 8.12  | Compliance with Safety Program.....   | 36 |
| Article 9 – Engineer’s Status During Construction ..... |   | 36 |
| 9.01  | Owner’s Representative.....   | 36 |
| 9.02  | Visits to Site .....  | 36 |
| 9.03  | Project Representative .....  | 36 |
| 9.04  | Authorized Variations in Work .....   | 36 |
| 9.05  | Rejecting Defective Work .....  | 37 |
| 9.06  | Shop Drawings, Change Orders and Payments .....                                 | 37 |
| 9.07  | Determinations for Unit Price Work .....  | 37 |
| 9.08  | Decisions on Requirements of Contract Documents and Acceptability of Work ..... | 37 |

|              |   |    |
|--------------|---|----|
| 9.09         | Limitations on Engineer's Authority and Responsibilities.....                   | 38 |
| 9.10         | Compliance with Safety Program.....   | 38 |
| Article 10 – | Changes in the Work; Claims .....   | 38 |
| 10.01        | Authorized Changes in the Work .....  | 38 |
| 10.02        | Unauthorized Changes in the Work .....  | 39 |
| 10.03        | Execution of Change Orders.....   | 39 |
| 10.04        | Notification to Surety.....   | 39 |
| 10.05        | Claims.....   | 39 |
| Article 11 – | Cost of the Work; Allowances; Unit Price Work.....                              | 40 |
| 11.01        | Cost of the Work .....  | 40 |
| 11.02        | Allowances .....  | 43 |
| 11.03        | Unit Price Work .....   | 43 |
| Article 12 – | Change of Contract Price; Change of Contract Times .....                        | 44 |
| 12.01        | Change of Contract Price.....   | 44 |
| 12.02        | Change of Contract Times .....  | 45 |
| 12.03        | Delays.....   | 45 |
| Article 13 – | Tests and Inspections; Correction, Removal or Acceptance of Defective Work..... | 46 |
| 13.01        | Notice of Defects .....   | 46 |
| 13.02        | Access to Work .....  | 46 |
| 13.03        | Tests and Inspections .....   | 46 |
| 13.04        | Uncovering Work.....  | 47 |
| 13.05        | Owner May Stop the Work.....  | 47 |
| 13.06        | Correction or Removal of Defective Work.....                                    | 47 |
| 13.07        | Correction Period .....   | 48 |
| 13.08        | Acceptance of Defective Work .....  | 49 |
| 13.09        | Owner May Correct Defective Work .....  | 49 |
| Article 14 – | Payments to Contractor and Completion.....                                      | 50 |
| 14.01        | Schedule of Values .....  | 50 |
| 14.02        | Progress Payments .....   | 50 |
| 14.03        | Contractor's Warranty of Title .....  | 52 |
| 14.04        | Substantial Completion.....   | 52 |
| 14.05        | Partial Utilization .....   | 53 |
| 14.06        | Final Inspection.....   | 54 |
| 14.07        | Final Payment .....   | 54 |
| 14.08        | Final Completion Delayed.....   | 55 |
| 14.09        | Waiver of Claims .....  | 55 |
| Article 15 – | Suspension of Work and Termination .....  | 56 |
| 15.01        | Owner May Suspend Work .....  | 56 |
| 15.02        | Owner May Terminate for Cause.....  | 56 |
| 15.03        | Owner May Terminate For Convenience.....  | 57 |
| 15.04        | Contractor May Stop Work or Terminate .....                                     | 57 |
| Article 16 – | Dispute Resolution .....  | 58 |
| 16.01        | Methods and Procedures.....   | 58 |

|                                     |    |
|-------------------------------------|----|
| Article 17 – Miscellaneous.....     | 58 |
| 17.01 Giving Notice.....            | 58 |
| 17.02 Computation of Times .....    | 58 |
| 17.03 Cumulative Remedies .....     | 59 |
| 17.04 Survival of Obligations ..... | 59 |
| 17.05 Controlling Law .....         | 59 |
| 17.06 Headings.....                 | 59 |

## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
  3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
  7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
  9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
  10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
  11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *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.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order



following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 *Terminology*

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

### B. *Intent of Certain Terms or Adjectives:*

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

### C. *Day:*

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

### D. *Defective:*

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

### E. *Furnish, Install, Perform, Provide:*

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

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01   *Delivery of Bonds and Evidence of Insurance***

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

### **2.02   *Copies of Documents***

- A. Contractor can obtain documents as outlined in the Advertisement for Bids.

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

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

### **2.04   *Starting the Work***

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

## 2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  2. a preliminary Schedule of Submittals; and
  3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

## 2.06 *Preconstruction Conference; 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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

## 2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

## ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

### 3.02 *Reference Standards*

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

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies:*

- 1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
- 2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable

Law or Regulation , (b) any standard, specification, manual, or code, or (c) 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 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

*B. Resolving Discrepancies:*

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

*3.04 Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
  1. A Field Order;
  2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
  3. Engineer's written interpretation or clarification.

*3.05 Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
  1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
  2. 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.

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

#### 3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

### **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

#### 4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

#### 4.02 *Subsurface and Physical Conditions*

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

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
  2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

#### 4.03 *Differing Subsurface or Physical Conditions*

- A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:
1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
  2. is of such a nature as to require a change in the Contract Documents; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

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

*C. Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
  - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
  - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

**4.04**    *Underground Facilities*

- A. Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
  2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all such information and data;



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

*B. Not Shown or Indicated:*

- 1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- 2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

*4.05 Reference Points*

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

*4.06 Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. 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 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a

result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 5 – BONDS AND INSURANCE**

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

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

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

#### 5.02 *Licensed Sureties and Insurers*

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

#### 5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

#### 5.04 *Contractor's Insurance*

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

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
  3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
    - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
    - b. by any other person for any other reason;
  5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
  6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
  2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
  3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
  4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
  5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

6. include completed operations coverage:

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

#### 5.05 *Owner's Liability Insurance*

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

#### 5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
  2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
  3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
  5. allow for partial utilization of the Work by Owner;
  6. include testing and startup; and
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### 5.07 *Waiver of Rights*

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

- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
  2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

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

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure



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

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

**ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES**

6.01 *Supervision and Superintendence*

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

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

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

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

#### 6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

#### 6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
  - 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and

- 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
  - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
  - 1) shall certify that the proposed substitute item will:
    - a) perform adequately the functions and achieve the results called for by the general design,
    - b) be similar in substance to that specified, and
    - c) be suited to the same use as that specified;
  - 2) will state:
    - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
    - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
    - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

- a) all variations of the proposed substitute item from that specified, and
  - b) available engineering, sales, maintenance, repair, and replacement services; and
- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute 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.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

#### 6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Instructions to Bidders require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list

thereof in accordance with the Instructions to Bidders, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
  - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

## 6.07 *Patent Fees and Royalties*

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

## 6.08 *Permits*

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

## 6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and

Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

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

#### 6.10 *Taxes*

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

#### 6.11 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, 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 claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

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

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

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

#### 6.12 *Record Documents*

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

#### 6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
  2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor



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

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

#### 6.14 *Safety Representative*

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

#### 6.15 *Hazard Communication Programs*

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

#### 6.16 *Emergencies*

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

#### 6.17 *Shop Drawings and Samples*

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

##### 1. *Shop Drawings:*

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

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
  - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

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

D. *Engineer's Review:*

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

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

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

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
  1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

#### 6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods,

techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## **ARTICLE 7 – OTHER WORK AT THE SITE**

### **7.01 *Related Work at Site***

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
  - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
  - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering 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. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

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

#### 7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
  - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
  - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

### **ARTICLE 8 – OWNER'S RESPONSIBILITIES**

#### 8.01 *Communications to Contractor*

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

#### 8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

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

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

## 8.12 *Compliance with Safety Program*

- 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 pursuant to Paragraph 6.13.D.

## **ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

### 9.01 *Owner's Representative*

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

### 9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 9.03 *Project Representative*

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

### 9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and



are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The

date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

#### 9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

#### 9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

### **ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

#### 10.01 *Authorized Changes in the Work*

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

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

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

#### 10.02 *Unauthorized Changes in the Work*

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

#### 10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
  - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
  - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
  - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

#### 10.04 *Notification to Surety*

- A. If 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.

#### 10.05 *Claims*

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

- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
  2. approve the Claim; or
  3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **11.01 *Cost of the Work***

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

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

#### 11.02 *Allowances*

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Contingency Allowance:*
  - 1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- C. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - 2. there is no corresponding adjustment with respect to any other item of Work; and
  - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in

Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

## **ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

### **12.01 *Change of Contract Price***

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
  - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
  - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
  - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
  - 1. a mutually acceptable fixed fee; or
  - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
    - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;



- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

#### 12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

#### 12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

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

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### **13.01 *Notice of Defects***

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

### **13.02 *Access to Work***

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

### **13.03 *Tests and Inspections***

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
  - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
  - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
  - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

#### 13.04 *Uncovering Work*

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

#### 13.05 *Owner May Stop the Work*

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

#### 13.06 *Correction or Removal of Defective Work*

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

resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

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

### 13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. repair such defective land or areas; or
  - 2. correct such defective Work; or
  - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

### 13.08 *Acceptance of Defective Work*

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

### 13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

## ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

### 14.02 *Progress Payments*

#### A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

#### B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations 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 9.07, 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 Documents; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due:*

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

*D. Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or
  - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

*14.03 Contractor's Warranty of Title*

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

*14.04 Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the



Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
  - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

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

#### 14.07 *Final Payment*

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

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
  - b. consent of the surety, if any, to final payment;
  - c. a list of all Claims against Owner that Contractor believes are unsettled; and
  - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner 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.

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

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

*C. Payment Becomes Due:*

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

*14.08 Final Completion Delayed*

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

*14.09 Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
  1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
  2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

## ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

### 15.01 *Owner May Suspend Work*

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

### 15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
  - 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  - 3. Contractor's repeated disregard of the authority of Engineer; or
  - 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
  - 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
  - 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
  - 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

#### 15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
  - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

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

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

Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

## **ARTICLE 16 – DISPUTE RESOLUTION**

### **16.01 *Methods and Procedures***

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
  - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
  - 2. agrees with the other party to submit the Claim to another dispute resolution process; or
  - 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

## **ARTICLE 17 – MISCELLANEOUS**

### **17.01 *Giving Notice***

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

### **17.02 *Computation of Times***

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls

on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

## SECTION 007300 - SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the General Conditions of the Construction Contract. All provisions which are not so amended or supplemented remain in full force and effect.

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 thereto.

### SC-4.02 *Subsurface and Physical Conditions*

Delete Paragraphs 4.02.A and 4.02.B in their entirety and insert the following:

- A. No reports or drawings related to Subsurface and Physical Conditions at the Site are known to Owner.
- B. Not Used.

### SC-4.06 *Hazardous Environmental Conditions*

Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following:

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.
- B. Not Used.

### SC-5.04 *Contractor's Liability Insurance*

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

- C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
  - 1. Worker's Compensation, and related coverages under Paragraphs 5.04.A.1 and A.2 of the General Conditions:



- a. State: Statutory
  - b. Applicable Federal: Statutory
  - c. Employer's Liability: \$500,000
- 2. Contractor's General Liability under Paragraphs 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:
  - a. General Aggregate: \$2,000,000
  - b. Products - Completed Operations Aggregate: \$1,000,000
  - c. Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
  - d. Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.
  - e. Excess or Umbrella Liability
    - i. General Aggregate: \$2,000,000
    - ii. Each Occurrence: \$2,000,000
- 3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:
  - a. Bodily Injury:
    - Each Person \$1,000,000
    - Each Accident \$2,000,000
  - b. Property Damage:
    - Each Accident \$1,000,000
  - c. Combined Single Limit of: \$1,000,000
- 4. Owner and Engineer to be endorsed and included on policies as additional insureds with the coverage being primary.

## **TECHNICAL SPECIFICATIONS INDEX**

|            |                               |
|------------|-------------------------------|
| Section 1  | General Provisions            |
| Section 2  | Utility Coordination          |
| Section 3  | Construction Staking          |
| Section 4  | Excavation & Placement        |
| Section 5  | Concrete                      |
| Section 6  | Asphalt Pavements             |
| Section 7  | Maintenance of Traffic        |
| Section 8  | Erosion and Sediment Control  |
| Section 9  | Landscaping                   |
| Section 10 | Storm Drainage                |
| Section 11 | Roadway & Drainage Excavation |
| Section 12 | Final Cleanup                 |

## **SECTION 1 - GENERAL PROVISIONS**

### **1.1 KENTUCKY DEPARTMENT OF HIGHWAYS - SPECIFICATIONS**

Except as indicated on the Plans, and in the Contract Documents and Specifications, all items of work including materials and construction methods shall comply with the current edition of the Kentucky Transportation Cabinet/ Department of Highways Standard Specifications for Road and Bridge Construction and all current revisions.

With regard to the incorporation Standard Specifications of KYTC into these Technical Specifications, the following should be noted:

Unless either the content implicitly or the Plans and Contract Documents and Specifications explicitly indicate otherwise, all KYTC references to "the Department" should be construed as being references to the City of Dayton .

Any discrepancy between the Standard Specifications of KYTC and the express intentions of the City of Dayton (i.e., Plans, Contract Documents and Specifications, and City of Dayton Standard Drawings) shall be resolved in favor of the latter.

### **1.2 ABBREVIATIONS**

Abbreviations of standards, codes, and publications used within these specifications are as follows:

|      |  |
|------|--|
| ASTM | American Society of Testing and Materials  |
| ANSI | American National Standard Institute   |
| KYTC | Kentucky Department of Highways, "The Standard Specifications for Road and Bridge Construction", Current Edition |

### **1.3 SCOPE**

It is the intent that the CONTRACTOR, in accordance with the Plans, Specifications and the Contract Documents, and other mutually acknowledged informational materials shall perform everything required to be performed and to furnish a complete, fully operating work, and shall provide and furnish all labor, materials, necessary tools, expendable and non-expendable equipment and all transportation services required for the entire, proper, substantial completion of the Work, the cost of all of which shall be included in his bid. The CONTRACTOR shall make all requisite excavations and foundation preparation for constructing curb, full depth pavement and retaining walls. The CONTRACTOR shall, where required, excavate and prepare subgrade for pavement and replacement. The CONTRACTOR shall provide all signs, lighting, barricades, temporary construction fencing, flagmen and watchmen and make provisions necessary to protect and maintain buildings, fences, trees, shrubs, poles, existing utility fixtures, water courses, surface drains, or other structures in, on, across, or adjacent to the work and repair all damage done to them where and as required. The CONTRACTOR shall perform all backfilling, restore walks, grass plots, flowers, shrubs, trees, paved surfaces, etc., damaged or disturbed and clear away all rubbish and surplus materials. The CONTRACTOR shall put in complete and acceptable working order the items covered by the contract.

This Specification sets forth several items of Work or conditions, which are required as integral parts of the successful completion of the Project. All items discussed herein under General Provisions are considered incidental to the overall accomplishment of the Project and no separate payment shall be made therefore unless otherwise noted elsewhere in these specifications.

#### **1.4 CONTRACTOR'S FACILITIES**

1.4.1 Sanitary Facilities: The CONTRACTOR shall provide and maintain all necessary sanitary facilities at the site, in accordance with all applicable regulations, and shall properly remove same at completion of the Project.

1.4.2 Utilities: The obtaining of all utilities, which may be required for construction, shall be the responsibility of the CONTRACTOR.

#### **1.5 CONTRACTOR'S FIELD OFFICE**

A CONTRACTOR'S Field Office is not required for this project.

#### **1.6 UTILITY COORDINATION**

Refer to Technical Specification Section 2 – Utility Coordination for the Contractor's responsibilities regarding existing utilities and coordination of work.

#### **1.7 INSTALLATION REQUIREMENTS**

Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned as suggested by the respective manufacturers, unless otherwise specified herein or directed by the ENGINEER.

#### **1.8 PROOF OF COMPLIANCE**

Whenever the Contract Documents require that a product be in accordance with Federal Specifications, ASTM Designations, ANSI Specifications, and other associations' standards, the CONTRACTOR shall present a certification from the manufacturer that the product complies therewith. When requested or specified, the CONTRACTOR shall submit supporting test data to substantiate compliance.

#### **1.9 DUST CONTROL**

The CONTRACTOR shall be responsible for minimizing the generation of dust resulting from his operations at all times. The CONTRACTOR shall be required to maintain all excavations, embankments, stockpiles, roads, permanent access roads, plant sites, waste areas, and all other work areas within or without the project boundaries free from dust, which would cause a hazard or nuisance to others. Approved temporary methods of stabilization consisting of sprinkling, chemical treatment, light bituminous treatment or similar methods will be permitted to control dust. Dust control shall be performed as the work proceeds and whenever a dust nuisance or hazard occurs.

### **1.10 REPAIR OF DAMAGE**

Any damage done to structures, fills, roadways, or other areas shall be repaired at the CONTRACTOR'S expense before final payment is made.

### **1.11 PROJECT EXTENT**

The CONTRACTOR shall be responsible for satisfying himself as to the construction limits for the Project. The CONTRACTOR shall not establish Work, storage, or staging area outside the Project Limits, unless otherwise directed or approved by the ENGINEER.

### **1.12 WORKING HOURS**

All Work on this Project shall be restricted to daylight hours but may be further restricted by the ENGINEER if required; except emergency Work, such as any necessary pumping, which may require 24-hour operation. If the CONTRACTOR elects to work beyond the normal work week, he shall notify the ENGINEER of his intent as far in advance as possible.

### **1.13 GUARANTEE**

The CONTRACTOR shall assume responsibility for all workmanship and materials for a period of one year from final payment. Any Work found to be defective due to failure to comply with the provision and intent of the Contract Documents shall be replaced at the CONTRACTOR'S expense.

### **1.14 PROPERTY CONSIDERATION**

Materials having a salvage value shall remain the property of the OWNER. Salvageable materials rejected by the OWNER shall become the responsibility of the CONTRACTOR to dispose of in a proper manner subject to the approval of the ENGINEER.

### **1.15 BLASTING**

No blasting allowed.

### **1.16 DIVERSION OF STORM WATER**

Appropriate measures must be taken to sandbag the necessary manholes and to pump drainage around the area under construction. The CONTRACTOR is responsible for developing a plan to divert storm drainage around the construction area with the approval from the ENGINEER. Materials, labor and all incidentals necessary to accomplish this diversion of storm drainage will be considered incidental to the contract.

### **1.17 HAZARDOUS MATERIAL - GAS LINES**

The CONTRACTOR is advised to exercise caution in his operations on this project, whether the plans indicate or do not indicate, the presence of any gas or hazardous material carrying lines.

#### **1.18 SEWER SERVICE MAINTENANCE**

This work shall consist of maintaining existing sanitary sewer service to residents in the area during construction. Sewage is to be maintained by whatever means necessary. No surcharge of manholes will be allowed.

Sanitary Sewer lines within the project area are subject to considerable inflow and infiltration of groundwater during or following rain events. CONTRACTOR should consider these periods of heavy flow when devising his sewer service maintenance plan and construction sequencing.

No separate payment will be made for Sewer Service Maintenance. Sewer Service Maintenance shall include all materials, equipment and labor necessary to maintain sewer service to residents during construction.

#### **1.19 EDGE KEY**

Where it is necessary to remove existing pavement, the CONTRACTOR will be required to furnish a neat edge along the pavement, obtained by sawing a neat line approximately one inch (1") deep in the surface before breaking the adjacent pavement away.

No direct payment will be made for Edge Key as this is considered incidental to the item for which the pavement removal is required.

#### **1.20 MOBILIZATION/DEMOBILIZATION**

Payment for the Contractor's mobilization and demobilization will be made at the Contract lump sum price and shall include all cost incurred for moving equipment to and from the Project area and any pertinent costs related thereto. The lump sum price for mobilization and demobilization shall not exceed five (5) percent of the total contract amount. Payment for the mobilization portion will be made in the first partial payment to the Contractor and shall not exceed 75 percent of the lump sum cost for mobilization and demobilization. Payment for the demobilization (remaining) portion shall be made in the final payment to the Contractor.

## **SECTION 2 - UTILITY COORDINATION**

### **2.1 SCOPE**

THE CONTRACTOR shall be responsible for all utility coordination associated with any existing and / or relocated utilities within the project corridor throughout the duration of the project.

A. The Contractor shall allow the Owner or his/her agents, and other project Contractors or their agents, to enter upon the work for the purpose of constructing, operating, maintaining, removing, repairing, altering, or replacing such pipes, sewers, conduits, manholes, wires, poles, or other structures and appliances which may be required to be installed at or in the work. The Contractor shall cooperate with all aforesaid parties and shall allow reasonable provisions for the prosecution of any other work by the Owner, or others, to be done in connection with his work, or in connection with normal use of the facilities.

B. Each Contractor shall cooperate fully with the Owner, the Engineer, and all other Contractors employed on the Work, to effect proper coordination and progress to complete the project on schedule and in proper sequence. Insofar as possible, decisions of all kinds required from the Engineer shall be anticipated by the Contractor to provide ample time for inspection, or the preparation of instructions.

C. Each Contractor shall assume full responsibility for the correlation of all parts of his/her work with that of other Contractors. Each Contractor's superintendent shall correlate all work with other Contractors in the laying out of work. Each Contractor shall lay out his/her own work in accordance with the Drawings, Specifications, and instructions of latest issue and with due regard to the work of other Contractors.

D. The Contractor shall be responsible for the preservation and protection of property adjacent to the work site against damage or injury as a result of his/her operations under this Contract. Any damage or injury occurring on account of any act, omission or neglect on the part of the Contractor shall be restored in a proper and satisfactory manner or replaced by and at the expense of the Contractor to an equal or superior condition than previously existed.

E. The Contractor shall comply promptly with such safety regulations as may be prescribed by the Owner or the local authorities having jurisdiction and shall, when so directed, properly correct any unsafe conditions created by, or unsafe practices on the part of, his/her employees. In the event of the Contractor's failure to comply, the Owner may take the necessary measures to correct the conditions or practices complained of, and all costs thereof will be deducted from any monies due the Contractor. Failure of the Engineer to direct the correction of unsafe conditions or practices shall not relieve the Contractor of his responsibility hereunder.

F. In the event of any claims for damage or alleged damage to property as a result of work under this Contract, the Contractor shall be responsible for all costs in connection with the settlement of or defense against such claims. Prior to commencement of work in the vicinity of

property adjacent to the work site, the Contractor, at his/her own expense, shall take such surveys as may be necessary to establish the existing condition of the property. Before final payment can be made, the Contractor shall furnish satisfactory evidence that all claims for damage have been legally settled or sufficient funds to cover such claims have been placed in escrow, or that an adequate bond to cover such claims has been obtained.

## 2.2 **EXISTING UTILITIES AND STRUCTURES**

A. The term existing utilities shall be deemed to refer to both publicly-owned and privately-owned utilities such as electric power and lighting, telephone, water, gas, storm drains, sanitary sewers and all appurtenant structures.

B. Where existing utilities and structures are indicated on the Drawings, it shall be understood that all of the existing utilities and structures affecting the work may not be shown and that the locations of those shown are approximate only. It shall be the responsibility of the Contractor to ascertain the actual extent and exact location of existing utilities and structures. In every instance, the Contractor shall notify the proper authority having jurisdiction and obtain all necessary directions and approvals before performing any work in the vicinity of existing utilities.

C. Prior to beginning any excavation work, the Contractor shall, through field investigations, determine any conflicts or interferences between existing utilities and new utilities to be constructed under this project. This determination shall be based on the actual locations, elevations, slopes, etc., of existing utilities as determined in the field investigations, and locations, elevation, slope, or other information of new utilities as shown on the Drawings. If interference exists, the Contractor shall bring it to the attention of the Engineer as soon as possible. If the Engineer agrees that an interference exists, he/she shall develop a plan to address the interference as required and obtain the Owner's approval. Additional costs to the Contractor for this change shall be processed through a Change Order as detailed elsewhere in these Contract Documents. In the event the Contractor fails to bring a potential conflict or interference to the attention of the Engineer prior to beginning excavation work, any actual conflict or interference which does arise during the Project shall be corrected by the Contractor, as directed by the Engineer, at no additional expense to the Owner.

D. The work shall be carried out in a manner to prevent disruption of existing services and to avoid damage to the existing utilities. Temporary connections shall be provided, as required, to insure no interruption of existing services. Any damage resulting from the work of this Contract shall be promptly repaired by the Contractor at his/her own expense in a manner approved by the Engineer and further subject to the requirements of any authority having jurisdiction. Where it is required by the authority having jurisdiction that they perform their own repairs or have them done by others, the Contractor shall be responsible for all costs thereof.

E. Where excavations by the Contractor require any utility lines or appurtenant structures to be temporarily supported and otherwise protected during the construction work, such support and protection shall be provided by the Contractor. All such work shall be performed in a manner satisfactory to the Engineer and the respective authority having jurisdiction over such work. In the



event the Contractor fails to provide proper support or protection to any existing utility, the Engineer may, at his discretion, have the respective authority to provide such support or protection as may be necessary to ensure the safety of such utility, and the costs of such measures shall be paid by the Contractor.

## **2.3 BASIS OF PAYMENT**

A. Repair or replacement of utility components or systems caused by or occurring through any act, omission or neglect on the part of the Contractor, or any other condition as noted above, shall be restored or replaced in a satisfactory manner at the Contractor's expense and is incidental to the work of this project.

## **SECTION 3 - CONSTRUCTION STAKING**

### **3.1 SCOPE**

The CITY ENGINEER will furnish and be responsible for all staking, including the initial staking. The CITY shall bear the cost of all staking necessary to control and complete the work according to the specifications to the lines and grades shown on the plans.

It will be the CITY ENGINEER'S responsibility to establish all office projection centerlines shown on the plans. Should, during the course of construction of this project, any construction stakes be destroyed by others, it will be the CITY ENGINEER'S responsibility to reset the stakes.

## **SECTION 4 - EXCAVATION & PLACEMENT**

### **4.1 SCOPE**

The Work shall consist of the required removal and proper utilization or disposal of all excavated materials, and the shaping and finishing to the required lines and grades as shown on the plans.

### **4.2 SUMMARY**

This Section includes all work; labor, machinery, disposal and replacement of unsuitable soil, existing pavement, removal of rock and any materials encountered to plan bottom depth for all earthwork related items. These items shall include, but are not limited to, earthwork procedures for drives, parking lots, pavements, , utility trenches, etc. No change in the contract price will be considered for any materials encountered and/or required to be removed, or replaced to achieve the earthwork requirements.

### **4.3 SUBMITTALS**

- A. Material Test Reports: From a qualified testing agency indicating and interpreting test results for compliance of the following with requirements indicated:
  - 1. Classification according to ASTM D 2487 of each on-site or borrow soil material proposed for fill and backfill.
  - 2. Laboratory compaction curve according to ASTM D 698 for each on-site or borrow soil material proposed for fill and backfill.
  - 3. All reports are to be signed by a Professional Engineer with licences to practice in the state of this project.

### **4.4 PROJECT CONDITIONS**

- A. Existing Utilities: Do not interrupt utilities serving facilities occupied by Owner or others unless permitted in writing by Owner or Engineer and then only after arranging to provide temporary utility services according to requirements indicated:
  - 1. Notify Owner not less than two days in advance of proposed utility interruptions.
  - 2. Do not proceed with utility interruptions without Owner's written permission.
  - 3. Contact utility-locator service for area where Project is located before excavating.
  - 4. Locate existing underground utilities in areas of excavation work. If utilities are indicated to remain in place, provide adequate means of support and protection during earthwork operations.
  - 5. Should uncharted, or incorrectly charted, piping or other utilities be encountered during excavation, consult the utility owner immediately for directions. Cooperate with Owner and utility companies in keeping respective services and facilities in operation. Repair damaged utilities to the utility owner's satisfaction at no cost to the Owner.

### **4.5 SOIL MATERIALS**

- A. General: Provide borrow soil materials when sufficient satisfactory soil materials are not available from excavations.
- B. Satisfactory Soils: ASTM D 2487 soil classification groups GW, GP, GM, SW, SP, GC, SC and SM, or a combination of these group symbols; free of rock or gravel larger than 3 inches (75 mm) in any dimension, debris, waste, frozen materials, vegetation, and other deleterious matter.
  - 1. CL and CH with a dry density above 100, a Liquid Limit less than 50 and a Plastic Index under 35 will also be considered satisfactory.
- C. Unsatisfactory Soils: ASTM D 2487 soil classification groups ML, MH, OL, OH, and PT, or a combination of these group symbols.
  - 1. Unsatisfactory soils also include satisfactory soils not maintained within 2 percent of optimum moisture content at time of compaction.
  - 2. CL and CH with a dry density below 100, a Liquid Limit greater than 50 and a Plastic Index greater than 35 will be considered for use only by recommendation by the Geotechnical Engineer. Additional requirements for use of these types of soil may be required.

#### **4.6 PREPARATION**

- A. Protect structures, utilities, sidewalks, pavements, and other facilities from damage caused by settlement, lateral movement, undermining, washout, and other hazards created by earthwork operations.
- B. Protect subgrades and foundation soils against freezing temperatures or frost. Provide protective insulating materials as necessary.
- C. Provide erosion-control measures to prevent erosion or displacement of soils and discharge of soil-bearing water runoff or airborne dust to adjacent properties and walkways.

#### **4.7 DEWATERING**

- A. Prevent surface water and ground water from entering excavations, from ponding on prepared subgrades, and from flooding Project site and surrounding area.
- B. Protect subgrades from softening, undermining, washout, and damage by rain or water accumulation.
  - 1. Reroute surface water runoff away from excavated areas. Do not allow water to accumulate in excavations. Do not use excavated trenches as temporary drainage ditches.

2. Pumps and other dewatering devices must utilize filters sufficient to remove silts and solids from water prior before sending it to the storm sewer system.

#### **4.8 EXPLOSIVES**

- A. Explosives: shall not be permitted.

#### **4.9 EXCAVATION, GENERAL**

- A. Unclassified Excavation: Excavation regardless of the character of surface and subsurface conditions encountered, including rock, soil materials, and obstructions.

If excavated materials intended for fill and backfill include unsatisfactory soil materials and rock, replace with satisfactory soil materials. Geotechnical information is provided, however the Contractor may conduct additional tests to alleviate anticipated unknowns at his desire and expense.

#### **4.10 EXCAVATION FOR STRUCTURES**

- A. Excavate to indicated elevations and dimensions within a tolerance of plus or minus 1 inch (25 mm). Extend excavations a sufficient distance from structures for placing and removing concrete formwork, for installing services and other construction, and for inspections.
  1. Excavations for Footings and Foundations: Do not disturb bottom of excavation. Excavate by hand to final grade just before placing concrete reinforcement. Trim bottoms to required lines and grades to leave solid base to receive other work.
  2. Excavation for Drainage Structures Basins, and Mechanical or Electrical Utility Structures: Excavate to elevations and dimensions indicated within a tolerance of plus or minus 1 inch (25 mm). Do not disturb bottom of excavations intended for bearing surface.

#### **4.11 EXCAVATION FOR WALKS AND PAVEMENTS**

- A. Excavate surfaces under walks and pavements to indicated plans, elevations, and grades.

#### **4.12 EXCAVATION FOR UTILITY TRENCHES**

- A. Excavate trenches to indicated gradients, lines, depths, and elevations.
  1. Beyond building perimeter, excavate trenches to allow installation of top of pipe below frost line.
- B. Excavate trenches to uniform widths to provide a working clearance on each side of pipe or conduit. Excavate trench walls vertically from trench bottom to 12 inches (300 mm) higher than top of pipe or conduit, unless otherwise indicated.
  1. Clearance: 12 inches (300 mm) on each side of pipe or conduit.

- C. Trench Bottoms: Excavate and shape trench bottoms to provide uniform bearing and support of pipes and conduit. Shape subgrade to provide continuous support for bells, joints, and barrels of pipes and for joints, fittings, and bodies of conduits. Remove projecting stones and sharp objects along trench subgrade.
  - 1. For pipes and conduit less than 6 inches (150 mm) in nominal diameter and flat-bottomed, multiple-duct conduit units, hand-excavate trench bottoms and support pipe and conduit on an undisturbed subgrade.
  - 2. For pipes and conduit 6 inches (150 mm) or larger in nominal diameter, shape bottom of trench to support bottom 90 degrees of pipe circumference. Fill depressions with tamped sand backfill.
  - 3. Excavate trenches 6 inches (150 mm) deeper than elevation required in rock or other unyielding bearing material to allow for bedding course.

#### **4.13 APPROVAL OF SUBGRADE**

- A. Notify Engineer when excavations have reached required subgrade.
- B. If Engineer determines that unsatisfactory soil is present, continue excavation and replace with compacted backfill or fill material as directed.
- C. Proof roll subgrade with heavy pneumatic-tired equipment to identify soft pockets and areas of excess yielding. Do not proof roll wet or saturated subgrades.
- D. Reconstruct subgrades damaged by freezing temperatures, frost, rain, accumulated water, or construction activities, as directed by Engineer.

#### **4.14 STORAGE OF SOIL MATERIALS**

- A. Stockpile borrow materials and satisfactory excavated soil materials. Stockpile soil materials without intermixing. Place, grade, and shape stockpiles to drain surface water. Cover to prevent windblown dust.
  - 1. Stockpile soil materials away from edge of excavations. Do not store within drip line of remaining trees.

#### **4.15 BACKFILL**

- A. Place and compact backfill in excavations promptly, but not before completing the following:
  - 1. Surveying locations of underground utilities for record documents.
  - 2. Inspecting and testing underground utilities.

3. Removing concrete formwork.
4. Removing trash and debris.
5. Removing temporary shoring and bracing, and sheeting.
6. Installing permanent or temporary horizontal bracing on horizontally supported walls.

#### **4.16 UTILITY TRENCH BACKFILL**

- A. Place and compact bedding course on trench bottoms and where indicated. Shape bedding course to provide continuous support for bells, joints, and barrels of pipes and for joints, fittings, and bodies of conduits.
- B. Backfill trenches excavated under footings and within 18 inches (450 mm) of bottom of footings; fill with concrete to elevation of bottom of footings.
- C. Provide 4-inch- (100-mm-) thick, concrete-base slab support for piping or conduit less than 30 inches (750 mm) below surface of roadways. After installing and testing, completely encase piping or conduit in a minimum of 4 inches (100 mm) of concrete before backfilling or placing roadway subbase.
- D. Place and compact initial backfill of subbase material, free of particles larger than 1 inch (25 mm), to a height of 12 inches (300 mm) over the utility pipe or conduit.
  1. Carefully compact material under pipe haunches and bring backfill evenly up on both sides and along the full length of utility piping or conduit to avoid damage or displacement of utility system.
- E. Coordinate backfilling with utilities testing.
- F. Place and compact final backfill of satisfactory soil material to final subgrade.
- G. Install warning tape directly above utilities, 12 inches (300 mm) below finished grade, except 6 inches (150 mm) below subgrade under pavements and slabs.

#### **4.17 FILL**

- A. Preparation: Remove vegetation, topsoil, debris, unsatisfactory soil materials, obstructions, and deleterious materials from ground surface before placing fills.
- B. Plow, scarify, bench, or break up sloped surfaces steeper than 1 vertical to 4 horizontal so fill material will bond with existing material.
- C. Place and compact fill material in layers to required elevations as follows:
  1. Under grass and planted areas, use satisfactory soil material.
  2. Under walks and pavements, use satisfactory soil material.
  3. Under steps and ramps, use engineered fill.

4. Under building slabs, use engineered fill.
5. Under footings and foundations, use engineered fill.

#### **4.18 MOISTURE CONTROL**

- A. Uniformly moisten or aerate subgrade and each subsequent fill or backfill layer before compaction to within 2 percent of optimum moisture content.
  1. Do not place backfill or fill material on surfaces that are muddy, frozen, or contain frost or ice.
  2. Remove and replace, or scarify and air-dry, otherwise satisfactory soil material that exceeds optimum moisture content by 2 percent and is too wet to compact to specified dry unit weight.

#### **4.19 COMPACTION OF BACKFILLS AND FILLS**

- A. Place backfill and fill materials in layers not more than 8 inches (200 mm) in loose depth for material compacted by heavy compaction equipment, and not more than 4 inches (100 mm) in loose depth for material compacted by hand-operated tampers.
- B. Place backfill and fill materials evenly on all sides of structures to required elevations, and uniformly along the full length of each structure.
- C. Compact soil to not less than the following percentages of maximum dry unit weight according to ASTM D 698:
  1. Under structures, steps, and pavements, scarify and recompact top 12 inches (300 mm) of existing subgrade and each layer of backfill or fill material at 98 percent. The moisture content shall be maintained between minus 3, plus 1 percent of the optimal moisture.
  2. Under walkways, scarify and recompact top 6 inches (150 mm) below subgrade and compact each layer of backfill or fill material at 95 percent. The moisture content shall be maintained between minus 3, plus 1 percent of the optimal moisture.
  3. Under lawn or unpaved areas, scarify and recompact top 6 inches (150 mm) below subgrade and compact each layer of backfill or fill material at 85 percent.

#### **4.20 GRADING**

- A. General: Uniformly grade areas to a smooth surface, free from irregular surface changes. Comply with compaction requirements and grade to cross sections, lines, and elevations indicated.
  1. Provide a smooth transition between adjacent existing grades and new grades.
  2. Cut out soft spots, fill low spots, and trim high spots to comply with required surface tolerances.
- B. Site Grading: Slope grades to direct water away from buildings and to prevent ponding. Finish subgrades to required elevations within the following tolerances:



1. Lawn or Unpaved Areas: Plus or minus 1 inch (25 mm).
2. Walks: Plus or minus 1 inch (25 mm).
3. Pavements: Plus or minus 1/2 inch (13 mm).

#### **4.21 SUBBASE AND BASE COURSES**

- A. Under pavements and walks, place subbase course on prepared subgrade and as follows:
1. Place base course material over subbase.
  2. Compact subbase and base courses at optimum moisture content to required grades, lines, cross sections, and thickness to not less than 95 percent of maximum dry unit weight according to ASTM D 1557. The moisture content shall be maintained between minus 3, plus 1 percent of the optimal moisture.
  3. Shape subbase and base to required crown elevations and cross-slope grades.
  4. When thickness of compacted subbase or base course is 6 inches (150 mm) or less, place materials in a single layer.
  5. When thickness of compacted subbase or base course exceeds 6 inches (150 mm), place materials in equal layers, with no layer more than 6 inches (150 mm) thick or less than 3 inches (75 mm) thick when compacted.

#### **4.22 PROTECTION**

- A. Protecting Graded Areas: Protect newly graded areas from traffic, freezing, and erosion. Keep free of trash and debris.
- B. Repair and reestablish grades to specified tolerances where completed or partially completed surfaces become eroded, rutted, settled, or where they lose compaction due to subsequent construction operations or weather conditions.
1. Scarify or remove and replace soil material to depth as directed by Engineer; reshape and recompact.
- C. Where settling occurs before Project correction period elapses, remove finished surfacing, backfill with additional soil material, compact, and reconstruct surfacing.
1. Restore appearance, quality, and condition of finished surfacing to match adjacent work, and eliminate evidence of restoration to the greatest extent possible.

#### **4.23 DISPOSAL OF SURPLUS AND WASTE MATERIALS**

- A. Disposal: Transport surplus satisfactory soil off the Owner's property.
1. Remove waste material, including unsatisfactory soil, trash, and debris, and legally dispose of it off Owner's property

## **SECTION 5 - CONCRETE**

### **5.1 SCOPE**

The Work described by this Section consists of furnishing all materials and equipment, and performing all labor, for the complete construction of all concrete work, including all work and appurtenances thereto, as shown or specified, or both. Work shall include the installation of all the concrete work, and all other Work and appurtenances specified or required, or both for proper execution of the Work. All products to be built into concrete work shall be correctly positioned in the form work; positioning must be inspected and approved by the ENGINEER before concrete is placed.

### **5.2 APPLICABLE SPECIFICATIONS**

Concrete: Concrete work shall conform to all requirements of the Building Code Requirements for Reinforced Concrete, ACI-318, latest edition of, and all codes and standards cited therein and the standard minimum specifications for ready-mixed concrete. Concrete shall also be Class "A" and comply with Section 601 and 712 of the current edition Of the KYTC Standard Specifications for Road and Bridge Construction.

### **5.4 CONCRETE CURBS AND GUTTERS**

- A. This work shall consist of constructing one prepared subgrade, and curbs at the elevations and to the lines and grades shown on the plans to the required section and depth on a firm base as approved by the OWNER or ENGINEER and in accordance with the KYTC Standard Drawings.

### **5.6 RETAINING WALL**

- A. The new retaining wall shall be constructed per the plan details and KYTC specifications.

## **SECTION 6 - ASPHALT PAVEMENTS**

### **6.1 ASPHALT PAVEMENT SURFACE AND BASE**

- A. This work shall consist of constructing one or more courses of asphalt pavement surface or base on a prepared base in accordance with KYTC Standard Specifications and in reasonably close conformity with the lines, grades, thickness and typical sections shown on the plans or established by the ENGINEER.

The asphalt surface or base shall be composed of a mixture of aggregate, filler when required and asphalt material.

- B. Mixtures: See KYTC Sections 402 through 403.  
Asphalt Surface shall be Class 1, 0.38D PG64-22  
Asphalt Base shall be Class 1, 0.75D PG64-22

### **6.2 BITUMINOUS MATERIAL FOR TACK**

- A. This work shall consist of preparation of existing bases or surfaces, and the application thereto of liquid asphalt material prior to the placing of covering courses of asphalt mixtures or treatments. Asphalt Tack Coat shall consist of the application of liquid asphalt material to the surface of concrete or brick pavements and bases, to existing asphalt surfaces, and when necessary, to newly constructed asphalt courses.
- B. Materials: The asphalt material shall be either SS-I or SS-IH and shall meet the requirements of KYTC Standard Specifications, current edition, Section 806. All equipment required for performance of this work shall be approved before construction is started and shall be maintained in a satisfactory operating condition.

The CONTRACTOR shall provide hand brooms and other small tools and equipment essential to the completion of the work in addition to a mechanical broom or sweeper, asphalt heating equipment and a pressure distributor as needed.

- C. Method of Measurement: When an approved cutback asphalt is furnished for the tack coat, the actual quantity will be measured for compliance. Asphalt materials for tack coat will be weighed in accordance with the requirements for KYTC Standard Specifications Section 109.

### **6.3 NO. 2 STONE**

This base course shall consist of No. 2 stone at a depth of 12" per the site detail shown for the pavement detail.

### **6.4 DENSE GRADE AGGREGATE BASE**

This base course shall consist of graded aggregate and water mixed with or without an admixture, placed on a prepared sub grade, and shaped and compacted to the lines, grades and cross section shown on the plans and as directed by the Engineer to maintain access to driveways, etc. and for Maintenance of Traffic.

- A. Materials: Materials shall meet the requirements of the following KYTC Standard Specifications, current edition Section:

|                  |     |
|------------------|-----|
| Aggregate        | 805 |
| Calcium Chloride | 825 |

Water used in the mixture will be subject to approval by the ENGINEER on the project.

When approved by the ENGINEER, the aggregate may be produced by blending 2 or more aggregate sizes. When blending is permitted, the separate sizes shall be fed uniformly into the mixer and a synchronized proportioning system between the feeders shall be provided.

- B. The subgrade shall be prepared in accordance with KYTC Standard Specifications, current edition Section 207, and shall be maintained free from irregularities.

It is intended that the dense-graded aggregate base shall be completely covered with the specified pavement courses before the work is suspended for the winter months. The CONTRACTOR shall make every effort to accomplish this objective. When the dense graded aggregate base course is not completely covered with the specified pavement courses, the OWNER or ENGINEER will then determine the extent of any further work necessary to protect and maintain the uncompleted work during -the winter months and until the beginning of spring paving operations. When extra materials, methods, and construction techniques, not part of the specified contract, are determined to be necessary to protect, maintain, and repair any portion of the uncompleted work, the cost of such extra materials, methods, and techniques shall be borne by the CONTRACTOR.

## **6.5 REMOVAL BITUMINOUS CONCRETE PAVEMENT**

- A. Removal of Bituminous Concrete Pavement will include all equipment, labor, and materials needed to provide full depth removal of existing bituminous pavement per the plans and specifications. Any necessary pavement milling and texturing will be incidental to "Remove Bituminous Concrete Pavement".

## **SECTION 7 - MAINTENANCE OF TRAFFIC**

### **7.1 SCOPE**

The CONTRACTOR shall maintain all local vehicular and pedestrian traffic along the project during construction. The CONTRACTOR shall present a plan for maintenance of traffic and traffic signs subject to the approval of the Engineer prior to the beginning of work. All bus routes, including school bus routes, shall remain in operation during scheduled bus operating hours.

### **7.2 SIGNING**

The CONTRACTOR shall furnish and erect suitable barricades, signs and other necessary devices to control, guide and safeguard traffic passing through or around the construction project. All such devices shall conform in all respects to the requirements of the Manual on Uniform Traffic Control Devices for Highway Construction and Maintenance Projects.

The CONTRACTOR, before erecting any barricades or changing the location of one already placed, shall notify the ENGINEER at least three days prior to such contemplated erection or change, except in case of an emergency. In case of an emergency, the ENGINEER may direct the CONTRACTOR to immediately provide safety and warning devices to safeguard traffic. All nighttime control devices requiring illumination shall be lighted every night during the entire period from sunset to sunrise. The CONTRACTOR will be held responsible for all damage to work due to failure to barricades, signs, lights, and watchmen to protect it; and whenever evidence of such damage is found prior to acceptance, the ENGINEER may order the damaged portion removed and replaced by the CONTRACTOR at the CONTRACTOR'S expense. The responsibility remains the CONTRACTOR'S until the project is accepted.

## **SECTION 8 – EROSION AND SEDIMENT CONTROL**

### **8.1 SCOPE OF WORK**

- A. The Contractor shall furnish all labor, materials, and equipment required for installing, maintaining, amending, and removing temporary soil erosion, sediment, and pollutant controls as shown on the plans
- B. The Contractor shall take all site management measures necessary to minimize erosion and contain sediment, construction materials (including excavation and backfill), and pollutants (such as chemicals, fuels, lubricants, bitumen, raw sewage, and other harmful waste) and prevent them from being discharged into or alongside any body of water or into natural or man-made channels leading thereto.
- C. The Contractor shall at all times minimize disturbance and the period of time that the disturbed area is exposed without stabilization practices. In “critical areas” (within 25 feet of a stream) erosion prevention measures such as erosion control mats/blankets, mulch, or straw blown in and stabilized with tackifiers or by treading, etc shall be implemented on disturbed areas within 24 hours or “as soon as practical” after completion of disturbance/grading or following cessation of activities.
- D. Temporary sedimentation controls include, but are not limited to, silt dams, traps, barriers, and appurtenances on sloped surfaces which will ensure that sedimentation pollution will be either eliminated or maintained within acceptable limits.
- F. Contractor is responsible for providing and maintaining effective temporary erosion and sediment control measures prior to and during construction or until final controls become effective.
- G. The Contractor shall inspect and repair all erosion and sedimentation controls as follows:
  - 1. At least once every seven (7) calendar days, and
  - 2. Within 24 hours after any storm event of 0.5 inch or greater.
- I. Final stabilization practices on those portions of the project where construction activities have permanently ceased shall be initiated within fourteen (14) days of the date of cessation of construction activities. Temporary stabilization practices on those portions of the project where construction activities have temporarily ceased shall be initiated within fourteen (14) days of the date of cessation of construction activities.
- J. **Erosion and Sediment Control prevention measures shall be installed prior to excavation of pavement.** The Contractor is responsible for preparing and submitting the state Notice of Intent and attachments and obtaining state permit approval prior to the beginning of any construction activities.

## **8.2 CHECK DAM**

- A. Check dams shall be limited to use in small, open channels that drain 10 acres or less.
- B. Check dams shall not be used in streams.
- C. Check dams can be constructed of stones, coir logs, or wood fiber logs.
- D. Check dams shall be constructed prior to the establishment of vegetation.
- E. The maximum height of a check dam shall be three feet above the ground on which the rock is placed.
- F. The center of the portion of the check dam above the flat portion of the channel shall be at least 1 foot lower than the outer edges. The outer edges of the check dam shall extend up the side slopes of the channel to a point 3 feet in elevation above the center portion of the check dam or to the top of the side slopes.
- G. The maximum spacing between rock check dams in a ditch should be such that the toe of the upstream dam is at the same elevation as the top of the next downstream dam.
- H. The spacing of coir and wood fiber check dams is one log every 100 feet for velocities of 5 fps, 50 feet for velocities between 5 and 7.5 fps, and 25 feet for velocities greater than 10 fps, unless otherwise shown in the Construction Documents.
- I. Stone check dams shall be constructed of KYTC Class II channel lining.
- J. Coir log or wood fiber log check dams shall be constructed of a single log with a diameter of at least 20 inches.

## **8.3 SILT FENCE**

- A. Silt fence shall be installed down-slope of areas to be disturbed prior to clearing and grading. Silt fence shall be situated such that the total area draining to the fence is not greater than one-fourth acre per 100 feet of fence. Silt fence shall be used for storm drain drop inlet protection and around soil stockpiles.
- B. Under no circumstances shall silt fences be constructed in streams or in swales or ditch lines or any area of concentrated flow where discharge rates are likely to exceed 1 cubic foot per second (cfs).
- C. Synthetic filter fabric shall be a pervious sheet of propylene, nylon, and polyester or ethylene yarn and shall be certified by the manufacturer or supplier as conforming to the following requirements:

**PHYSICAL PROPERTY**

Filtering Efficiency  
Tensile Strength at 20%  
Flow Rate

**REQUIREMENTS**

80% (minimum)  
50 lbs./linear inch (minimum)  
0.3 gal./ sq. ft/ min. (minimum)

- D. Synthetic filter fabric shall contain ultraviolet ray inhibitors and stabilizers to provide a minimum of 6 months of expected usable construction life at a temperature range of 0°F to 120°F.
- E. Posts for synthetic fabric silt fences shall be either 2-inch by 2-inch wood or 1.33 pounds per linear foot steel with a minimum length of 5 feet. Steel posts shall have projections for fastening wire to them.
- F. Wire fence reinforcement for silt fences shall be a minimum of 36 inches in height, a minimum of 14 gauge and shall have a mesh spacing of no greater than 6 inches.

**8.4 STORM DRAIN INLET PROTECTION**

- A. Storm drain inlet protection shall be utilized on drop inlets and curb inlets that receive sediment-laden runoff from disturbed areas.
- B. Storm drain inlet protection shall only be used around drop inlets when the up-slope area draining to the inlet has no other or inadequate sediment control.
- C. The drainage area shall be no greater than 1 acre.
- D. The inlet protection device shall be constructed in a manner that will facilitate cleanout and disposal of trapped sediment and minimize interference with construction activities.
- E. Inlet protection devices shall be constructed in such a manner that any resultant ponding of stormwater will not cause flooding or excessive inconvenience or damage to adjacent areas, roadways, properties, or structures.
- F. Inlet protection devices are low flow filter devices, and as such shall be constructed in such a manner as to allow for higher flows to bypass into the storm drain system to prevent flooding of the roadway or downstream properties.

**EXECUTION****8.5 GENERAL**

- A. Erosion and sediment control practices shall be consistent with the requirements of the state and local regulatory agencies and in any case shall be adequate to prevent erosion of disturbed and/or regraded areas.



- B. Contractor is responsible for notifying the state regulatory agency concerning inclusion under the KPDES General Permit for Storm Water Discharges Associated with Construction Activities.

## **8.6 SILT FENCE**

- A. This Article provides construction specifications for silt fences using synthetic fabric. See the Construction Drawings for additional detail.
- B. Posts shall be spaced a maximum of 10 feet apart at the barrier location and driven securely into the ground (minimum of 12 inches). When necessary because of rapid runoff, post spacing shall not exceed 6 feet.
- C. A trench shall be excavated at least 6 inches wide and 6 inches deep along the line of posts and upslope from the barrier.
- D. A wire mesh support fence shall be fastened securely to the upslope side of the posts using heavy-duty wire staples at least 1 inch long, tie wires or hog rings. The wire shall extend into the trench a minimum of 2 inches and shall not extend more than 36 inches above the original ground surface.
- E. The filter fabric shall be stapled or wired to the fence, and 12 inches of the fabric shall be extended into the trench. The fabric shall not extend more than 30 inches above the original ground surface. Filter fabric shall not be stapled to existing trees.
- F. At joints, filter fabric shall be lapped with terminating posts with a minimum overlap of 3 feet.
- G. The trench shall be backfilled and soil compacted over the filter fabric.
- H. Silt fences shall be removed when they have served their useful purpose, but not before the upslope area has been permanently stabilized.
- I. Silt fences and filter barriers shall be inspected immediately after each rainfall and at least daily during prolonged rainfall. Any required repairs shall be made immediately. Knocked down fences shall be repaired at the end of each day.
- J. Should the fabric on a silt fence or filter barrier decompose or become ineffective prior to the end of the expected usable life and if the barrier is still necessary, the fabric shall be replaced promptly.
- K. Sediment deposits shall be removed after each storm event or when deposits reach approximately one-third the height of the barrier.
- L. Any sediment deposits remaining in place after the silt fence or filter barrier is no longer required shall be dressed to conform to the existing grade, prepared, and seeded.
- M. Silt fences shall be replaced every 6 months.

N. Silt fence shall terminate in a “J” hook to prevent bypassing at the end of a row.

## **8.7 STORM DRAIN INLET PROTECTION**

A. All storm drains receiving sediment-laden flows from disturbed areas shall be protected. Approved inlet protection methods include net or sandbags filled 2/3 with rock, geotextile filtration products, and Contractor-fabricated structures.

B. For a silt fence drop inlet protection structure, the following specifications apply:

1. For stakes, Contractor shall use 2 x 4-inch wood (preferred) or equivalent metal with a minimum length of 3 feet.
2. Stakes shall be evenly spaced around the perimeter of the inlet a maximum of 3 feet apart and securely driven into the ground, approximately 18 inches deep.
3. To provide needed stability to the installation, Contractor shall frame with 2 x 4-inch wood strips around the crest of the overflow area at a maximum of 1.5 feet above the drop inlet crest and shall brace diagonally.
4. Contractor shall place the bottom 12 inches of the fabric in a trench and backfill the trench with at least 4 inches of crushed stone or 12 inches of compacted soil.
5. Contractor shall fasten fabric securely to the stakes and frame. Joints shall be overlapped to the next stake.

C. For sod drop inlet protection, sod shall be placed to form a turf mat covering the soil for a distance of 4 feet from each side of the inlet structure. Soil preparation and sod placement shall be in accordance with the section entitled Sod.

D. For gravel curb inlet protection, the following specifications apply:

1. Wire mesh with ½-inch openings shall be placed over the curb inlet opening so that at least 12 inches of wire extends across the concrete gutter from the inlet opening.
2. KYTC No. 2 Coarse Aggregate shall be piled against the wire so as to anchor it against the gutter and inlet cover and to cover the inlet opening completely.
3. This type of device shall never be used where overflow may endanger an exposed fill slope. Consideration shall also be given to the possible effects of ponding on traffic movement, nearby structures, working areas, and adjacent property.

E. For block and gravel curb inlet protection, the following specifications apply:

1. Two concrete blocks shall be placed on their sides abutting the curb at either side of the inlet opening to act as spacer blocks.

2. A 2-inch by 4-inch stud shall be cut and placed through the outer holes of each spacer block to help keep the front blocks in place.
  3. Concrete blocks shall be placed on their sides across the front of the inlet and abutting the spacer blocks.
  4. Wire mesh shall be placed over the outside of the concrete blocks to prevent stone from being washed through the holes in the blocks. Wire with ½-inch openings shall be used.
  5. KYTC No. 2 Coarse Aggregate shall be piled against the wire to the top of the barrier.
- F. For stone-filled corrugated pipe curb inlet protection, the following specifications apply:
1. Two concrete “L” blocks shall be placed on their sides, with one leg fitting into the mouth of the curb opening.
  2. A 6-inch corrugated pipe shall be filled with stone and covered with a filter sock.
  3. The stone-filled pipe will be placed in front of the two concrete “L” blocks and extend a minimum of the width of the curb inlet opening on either side. The total length of the stone filled pipe shall be three times the width of the curb inlet opening.
- G. The inlet protection structure shall be inspected after each rain, and repairs made as needed.
- H. Sediment shall be removed, and the device restored to its original dimensions when sediment has accumulated to one-third the design depth of the filter. Removed sediment shall be deposited in a suitable area and in such a manner that it will not erode.
- I. If a stone filter becomes clogged with sediment so that it no longer adequately performs its function, the stone shall be pulled away from the blocks, cleaned, and replaced.
- J. Structures shall be removed after the area draining to the inlet protection structure has been properly stabilized.

## **8.8 KPDES GENERAL PERMIT FOR STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITIES**

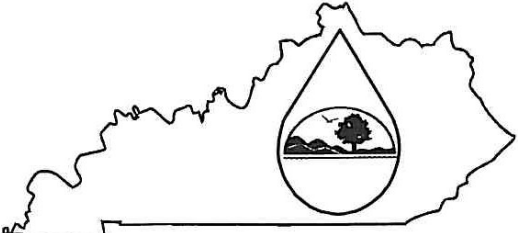
- A. The Contractor is responsible for filing the appropriate state Notice of Intent (NOI-SWCA) letter at least seven (7) days prior to start of construction activity for an electronic submittal, and at least thirty (30) days prior to start for a paper submittal. The Notice of Intent (NOI) is a Kentucky Pollution Discharge Elimination System (KPDES) permit application as provided by the Kentucky Revised Statutes, Chapter 224. This application is required to be submitted for construction projects that disturb one or more acres of land. A permit application form is included in this specification Section.

- B. The NOI requires the inclusion of the descriptions of (but is not limited to) the following items:
1. Names and designated uses of any receiving waters
  2. Anticipated number and locations of discharge points
  3. Identification of planned construction in or along a water body
- C. A topographic map showing project boundaries, areas to be disturbed, locations of anticipated discharge points and receiving waters is also required to be submitted with the NOI.
- D. If the construction site is near a designated “High Quality/Impaired Waters” or a “Cold Water Aquatic Habitat Waters, Exceptional Waters, Outstanding National/State Resource Waters,” additional items and/or individual permits will be required.
- E. The NOI form requires an SIC code. The link to the SIC codes is <http://www.osha.gov/pls/imis/sicsearch.html>. The following are the typical construction SIC codes utilized:
- 1623 – Water, Sewer, Pipeline, and Communications and Power Line Construction
  - 1629 – Heavy Construction, Not Elsewhere Classified
  - 1771 – Concrete Work
  - 1794 – Excavation Work
- F. The Contractor is responsible for implementing the approved Stormwater Pollution Prevention Plan (SWPPP) prior to commencement of site disturbance. The SWPPP shall include erosion prevention measures and sediment and pollutant control measures which are installed and maintained to minimize discharges of sediments and other pollutants from a 2-year, 24-hour storm event. The SWPPP must be kept at the site and available for review by state officials.
- G. The Contractor is responsible for the description of procedures to maintain erosion and sediment control measures during the period of construction.
- H. The Contractor is responsible for identifying each Contractor and Subcontractor who will install each SWPPP erosion and sediment control measure.
- I. Each Contractor and Subcontractor shall sign a statement certifying the awareness of the requirements of the SWPPP related documents. Certification is attached at the end of this section.
- J. The Contractor shall not start land disturbing activities until written permit coverage is obtained from the Kentucky Division of Water.
- K. The inspection by qualified personnel, **provided by the Contractor**, of the site as follows:
1. at least once every seven (7) calendar days, and

2. within 24 hours after any storm event of 0.5 inch or greater
- L. The Contractor is responsible for completing and maintaining the required Self-Inspection Forms. A sample is included in this specification Section.
- M. Amendments to the approved SWPPP shall be made and implemented as necessary through the course of the construction project if inspections or investigations by the Contractor's inspector, site staff, or by local, state, or federal officials determine that the existing sediment control measures, erosion control measures, or other site management practices are ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the construction site. All plan amendments shall be noted on the copy of the SWPPP maintained at the project site.
- N. Upon completion of the project and establishment of all permanent erosion and sediment control structures and devices, the Contractor shall submit the Notice of Termination (NOT) form to the Kentucky Division of Water. This form is included at the end of this specification section.
- O. All subcontractors shall be required to comply with the requirements of the state permit and the Stormwater Pollution Prevention Plan (SWPPP).
- P. Where to submit:
1. Submit Notice of Intent (NOI) Form to: Operational Permits Section, SWP Branch, Division of Water, 300 Sower Blvd., 3<sup>rd</sup> Floor, Frankfort, Kentucky 40601.
  2. For an electronic submittal, go to:  
<https://dep.gateway.ky.gov/eForms/Default.aspx?FormID=3>
  3. Do not initiate work until receiving approval from the Kentucky Division of Water.
  4. A complete copy of the NOI submittal shall also be provided to:

City of Dayton  
514 Sixth Avenue  
Dayton , KY 41074  
859-491-1600

# FORM NOI-SWCA

|   |  |
|---|--|
|  | <p style="text-align: center;"><b>KENTUCKY POLLUTION DISCHARGE<br/>ELIMINATION SYSTEM (KPDES)</b></p> <p style="text-align: center;"><b>Notice of Intent (NOI) for coverage of Storm Water<br/>Discharges Associated with Construction Activities Under<br/>the KPDES Storm Water General Permit KYR100000</b></p> |
|---|--|

This is an application for:

- ☐ New construction activity.  
☐ Modification of coverage for additional area in same watershed.  
☐ Modification of coverage for additional area in different watershed.

If Modification is checked, state reason for Modification:

|                |                          |   |   |   |   |   |  |  |  |  |
|----------------|--------------------------|---|---|---|---|---|--|--|--|--|
| For Agency Use | Permit No. (Leave Blank) | K | Y | R | 1 | 0 |  |  |  |  |
| For Agency Use | AI ID (Leave Blank)      |   |   |   |   |   |  |  |  |  |

## SECTION I – FACILITY OPERATOR INFORMATION

|                    |   |
|--------------------|---|
| Operator Name(s)*: | Phone*:   |
| Mailing Address*:  | Status of Owner/Operator: <input type="checkbox"/> Private <input type="checkbox"/> State <input type="checkbox"/> Federal<br><input type="checkbox"/> Public (other than state or federal) |
| City*:             | State* Zip Code*:   |

## SECTION II – FACILITY/SITE LOCATION INFORMATION

|                              |                               |            |
|------------------------------|-------------------------------|------------|
| Name of Project*:            | Physical Address*:            | City*:     |
| State*:                      | Zip Code*:                    | County*:   |
| Latitude (decimal degrees)*: | Longitude (decimal degrees)*: | SIC Code*: |

## SECTION III – SITE ACTIVITY INFORMATION

For single projects provide the following information

|                                    |   |             |                  |
|------------------------------------|---|-------------|------------------|
| Total Number of acres in project*: | Total Number of acres to be disturbed*: | Start date: | Completion date: |
|------------------------------------|---|-------------|------------------|

For common plans of development projects provide the following information

|  |   |   |
|--|---|---|
| Total Number of acres in project*:       | Number of individual lots in development: | Number of lots to be developed:                           |
| Total acreage intended to be disturbed*: |   | Number of acres intended to be disturbed at any one time: |
| Start date:                              | Completion date:                          | List Contractors:   |

## SECTION IV – DISCHARGE TO A WATER BODY

|   |   |
|---|---|
| Name of Receiving Water*:                   | Anticipated number of discharge points:   |
| Location of anticipated discharge points:   | Latitude (decimal degrees)* Longitude (decimal degrees)*  |
| Receiving Water Body Stream Use Designation | <input type="checkbox"/> Cold Water Aquatic Habitat <input type="checkbox"/> Domestic Water Supply <input type="checkbox"/> Outstanding State Resource Water<br><input type="checkbox"/> Secondary Contact Recreation <input type="checkbox"/> Primary Contact Recreation <input type="checkbox"/> Warm Water Aquatic Habitat |
| Antidegradation Categorization              | <input type="checkbox"/> Outstanding National Resource Water <input type="checkbox"/> Exceptional Water <input type="checkbox"/> High Quality Water <input type="checkbox"/> Impaired Water   |
| Name of Receiving Water*:                   | Anticipated number of discharge points:   |
| Location of anticipated discharge points:   | Latitude (decimal degrees)* Longitude (decimal degrees)*  |
| Receiving Water Body Stream Use Designation | <input type="checkbox"/> Cold Water Aquatic Habitat <input type="checkbox"/> Domestic Water Supply <input type="checkbox"/> Outstanding State Resource Water<br><input type="checkbox"/> Secondary Contact Recreation <input type="checkbox"/> Primary Contact Recreation <input type="checkbox"/> Warm Water Aquatic Habitat |
| Antidegradation Categorization              | <input type="checkbox"/> Outstanding National Resource Water <input type="checkbox"/> Exceptional Water <input type="checkbox"/> High Quality Water <input type="checkbox"/> Impaired Water   |

# FORM NOI-SWCA

|  |   |              |   |  |
|--|---|--------------|---|--|
| <b>SECTION V – DISCHARGE TO AN MS4</b>   |   |              |   |  |
| Name of MS4:   |   |              | Date of application /notification to the MS4 for construction site coverage:  |  |
| Number of discharge points:  | Location of each discharge point: Latitude (decimal degrees):*      Longitude (decimal degrees):* |              |   |  |
| <b>SECTION VI – CONSTRUCTION ACTIVITIES IN OR ALONG A WATER BODY</b>   |   |              |   |  |
| Will the project require construction activities in a water body or the riparian zone: <input type="checkbox"/> Yes <input type="checkbox"/> No  |   |              |   |  |
| If yes, describe scope of activity:  |   |              |   |  |
| Is a Clean Water Act 404 permit required: <input type="checkbox"/> Yes <input type="checkbox"/> No   |   |              | Is a Clean Water Act 401 Water Quality Certification required: <input type="checkbox"/> Yes <input type="checkbox"/> No |  |
| <b>SECTION VII – NOI PREPARER INFORMATION</b>  |   |              |   |  |
| First Name:*   | Last Name:*   | Phone :*     | eMail Address:*   |  |
| Mailing Address:*  | City:*  | State:*      | Zip Code:*  |  |
| <b>SECTION VIII – ATTACHMENTS</b>  |   |              |   |  |
| Attach a full size color USGS 7½-minute quadrangle map with the facility site clearly marked. USGS maps may be obtained from the University of Kentucky, Mines and Minerals Bldg, Room 106, Lexington, Kentucky 40506. Phone number (859) 257-3896.  |   |              |   |  |
| <b>SECTION IX – CERTIFICATION</b>  |   |              |   |  |
| I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. |   |              |   |  |
| Signature:*  |   | First Name:* | Last Name:*   |  |
| Phone:*  | eMail Address:  | Date:*       |   |  |

This completed application form and attachments should be sent to: SWP Branch, Division of Water, 200 Fair Oaks, Frankfort, Kentucky 40601. Questions should be directed to: SWP Branch, Operational Permits Section at (502) 564-3410.

## **KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM FORM NOI-SWCA – INSTRUCTIONS**

### **WHO MUST FILE A NOTICE OF INTENT (NOI) FORM**

Federal law at 40 CFR Part 122 prohibits point source discharges of stormwater associated with industrial activity to a water body of the Commonwealth of Kentucky without a Kentucky Pollutant Discharge Elimination System (KPDES) permit. The operator of an industrial activity that has such a storm water discharge must submit a NOI to obtain coverage under the KPDES Storm Water General Permit. If you have questions about whether you need a permit under the KPDES Storm Water program, or if you need information as to whether a particular program is administered by the state agency, call the **Storm Water Contact, Operational Permits Section, Kentucky Division of Water at (502) 564-3410**.

### **WHERE TO FILE NOI FORM**

NOIs must be sent to the following address or submitted in on-line at <https://dep.gateway.ky.gov/eForms/Default.aspx?FormID=3>:

Operational Permits Section  
SWP Branch, Division of Water  
200 Fair Oaks Lane  
Frankfort, KY 40601

**Electronic NOI-SWCAs are to be submitted a minimum of seven (7) working days prior to commencement of construction related activities. Paper NOI-SWCAs are to be submitted a minimum of thirty (30) working days prior to commencement of construction related activities.**

### **COMPLETING THE FORM**

Enter information in the appropriate areas only. (\*) denotes a required field. Enter N/A (Not Applicable) for fields that are required but do not apply to your submission. If you have any questions regarding the completion of this form call the **Storm Water Contact, Operational Permits Section, at (502) 564-3410**.

#### **SECTION I – FACILITY OPERATOR INFORMATION**

**Operator Name(s):** Enter the name or names of all operators applying for coverage under KYR10 using this NOI.

**Mailing Address, City, State, and Zip Code:** Provide the mailing address of the primary operator

**Phone No.:** Provide the telephone numbers of the person who is responsible for the operation.

**Status of Owner/Operator:** Select the appropriate legal status of the operator of the facility from the dropdown list.

Federal  
Public (other than federal or state)  
State  
Private

#### **SECTION II – FACILITY/SITE LOCATION INFORMATION**

**Name of Project:** Provide the name of the project.

**Physical Address, City, State, Zip Code and County:** Provide the physical address of the project.

**Latitude/Longitude:** Provide the general site latitude and longitude of the operation.

**SIC Code:** Enter the Standard Industrial Code for the project

#### **SECTION III – SITE ACTIVITY INFORMATION**

**For single projects provide the following information:**

**Total number of acres in project:** Indicate the total acreage of the project including both disturbed and undisturbed areas.

**Total number of acres to be disturbed:** Indicate the total number of acres of the project to be disturbed.

**Anticipated start date:** Indicate the approximate date of when construction activities will begin.

**Anticipated completion date:** Indicated the approximate date of when final stabilization will be achieved.

#### **For common plans of development provide the following information:**

**Total number of acres in project:** Indicate the total acreage of the project including both disturbed and undisturbed areas.

**Number of individual lots in development, if applicable:** Indicate the number of individual lots or unit in the common plan of development

**Number of lots to be developed:** Indicate the number of lots that you intend to develop.

**Total acreage of lots intended to develop:** Indicate the total acreage of the lots you intend to develop

**Total acreage intended to disturb:** Indicate the total acreage of the lots you intend to disturb

**Number of acres intended to disturb at any one time:** Indicate the maximum number of acres to be disturbed at any one time.

**Anticipated start date:** Indicate the approximate date of when construction activities will begin.

**Anticipated completion date:** Indicated the approximate date of when final stabilization will be achieved.

**List of contractors:** Provide the names of all known contractors that will be working on site.



## **KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM FORM NOI-SWCA – INSTRUCTIONS**

### **SECTION IV – IF THE PERMITTED SITE DISCHARGES TO A WATER BODY THE FOLLOWING INFORMATION IS REQUIRED**

**Name of Receiving Water:** Provide the names of the each water body receiving discharges from the site. Provide only official USGS names do not provide local names

**Anticipated number of discharge points:** Indicate the number of discharge points to each receiving water body.

**Location of anticipated discharge points:** Provide the latitude and longitude of each discharge point. Add points as necessary.

**Receiving Water Body Stream Use Designation:** Check all appropriate boxes

**Antidegradation Categorization:** Select from the drop down box one of the following:

Outstanding National Resource Water

Exceptional Water

High Quality Water

Impaired Water

### **SECTION V – IF THE PERMITTED SITE DISCHARGES TO A MS4 THE FOLLOWING INFORMATION IS REQUIRED**

**Name of MS4:** Provide the name of the MS4 to which the activity will discharge

**Number of discharge points to the MS4:** Indicate the number of discharge points

**Location of each discharge point:** Provide the latitude and longitude of each discharge point. Add points as necessary

**Date of application/notification to the MS4 for construction site permit coverage:** Indicate the date the MS4 has or will be notified.

### **SECTION VI – CONSTRUCTION ACTIVITIES IN OR ALONG A WATER BODY**

**Will the project require construction activities in a water body or the riparian zone:** Select Yes or No from the drop down box.

**If Yes, describe scope of activity:** Provide a brief description of the activity (ies) that will take place in the water body or the riparian zone.

**Is a Clean Water Act 404 permit required:** Select Yes or No from the drop down box.

**Is a Clean Water Act 401 Water Quality Certification required:** Select Yes or No from the drop down box.

### **SECTION VII – NOI PREPARER INFORMATION**

Provide the name, mailing address, telephone number and eMail address of the person preparing the NOI.

### **SECTION VIII –Attachments**

**Attach a USGS topographic map indicating the location of the activity and the proposed discharge points.**

### **SECTION IX – CERTIFICATION**

Provide the name, mailing address, telephone number and eMail address of the person who is responsible for the activity

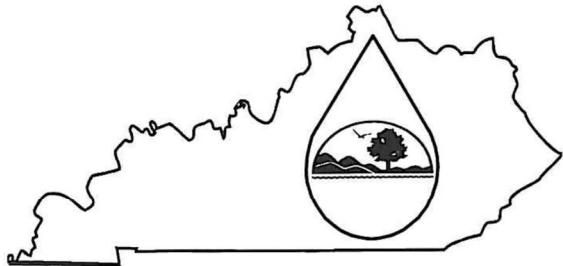
**Signature:** Provide full name of the responsibility party. This will constitute a signature.

The NOI must be signed as follows:

**Corporation:** by a principal executive officer of at least the level of vice president

**Partnership or sole proprietorship:** by a general partner or the proprietor respectively

**KPDES FORM NOT-SW**

|   |  |
|---|--|
|  | <p>Kentucky Pollutant Discharge<br/>Elimination System (KPDES)</p> <p><b>NOTICE OF TERMINATION (NOT)</b><br/>of Coverage Under the KPDES<br/>General Permit for Storm Water<br/>Discharges Associated with<br/>Industrial Activity</p> |
|---|--|

Submission of this Notice of Termination constitutes notice that the party identified in Section II of this form is no longer authorized to discharge storm water associated with industrial activity under the KPDES program.

ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.  
(Please see instructions on back before completing this form.)

|  |
|--|
| <b>I. PERMIT INFORMATION</b>   |
| KPDES Storm Water General Permit Number:   |
| Check here if you are no longer the Operator of the Facility: <input type="checkbox"/> |
| Check here if the Storm Water Discharge is Being Terminated: <input type="checkbox"/>  |
| <b>II. FACILITY OPERATOR INFORMATION</b>   |
| Name:  |
| Address:   |
| City/State/Zip Code:   |
| Telephone Number:  |
| <b>III. FACILITY/SITE LOCATION INFORMATION</b>   |
| Name:  |
| Address:   |
| City/State/Zip Code:   |

**Certification:** I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a KPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity of waters of the Commonwealth is unlawful under the Clean Water Act and Kentucky Regulations where the discharge is not authorized by a KPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Kentucky Revised Statutes.

|                      |       |
|----------------------|-------|
| NAME (Print or Type) | TITLE |
| SIGNATURE            | DATE  |

**INSTRUCTIONS**  
**NOTICE OF TERMINATION (NOT) OF COVERAGE UNDER THE KPDES GENERAL PERMIT**  
**FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY**

**Who May File a Notice of Termination (NOT) Form**

Permittees who are presently covered under the Kentucky Pollutant Discharge Elimination System (KPDES) General Permit for Storm Water Discharges Associated with Industrial Activity may submit a Notice of Termination (NOT) form when their facilities no longer have any storm water discharges associated with industrial activity as defined in the storm water regulations at 40 CFR 122.26 (b)(14), or when they are no longer the operator of the facilities.

For construction activities, elimination of all storm water discharges associated with industrial activity occurs when disturbed soils at the construction site have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with industrial activity from the construction site that are authorized by a KPDES general permit have otherwise been eliminated. Final stabilization means that all soil-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

**Where to File NOT Form**

Send this form to the following address:

**Section Supervisor  
Inventory & Data Management Section  
KPDES Branch, Division of Water  
14 Reilly Road, Frankfort Office Park  
Frankfort, KY 40601**

**Completing the Form**

Type or print legibly in the appropriate areas and according to the instructions given for each section. If you have questions about this form, call the Storm Water Contact, Industrial Section, at (502) 564-3410.

**Section I - Permit Information**

Enter the existing KPDES Storm Water General Permit number assigned to the facility or site identified in Section III. If you do not know the permit number, **call the Storm Water Contact, Industrial Section at (502) 564-3410.**

Indicate your reason for submitting this Notice of Termination by checking the appropriate box:

If there has been a change of operator and you are no longer the operator of the facility or site identified in Section III, check the corresponding box.

If all storm water discharges at the facility or site identified in Section III have been terminated, check the corresponding box.

**Section II - Facility Operator Information**

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

**Section III - Facility/Site Location Information**

Enter the facility's or site's official or legal name and complete address, including city, state and ZIP code. If the facility lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

**Section IV - Certification**

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

*For a corporation:* by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

*For a partnership or sole proprietorship:* by a general partner or the proprietor; or

*For a municipality, State, Federal, or other public facility:* by either a principal executive

## Kentucky Best Management Practices Plan • Construction Site Inspection Report

|   |                                       |   |
|---|---------------------------------------|---|
| <b>Company:</b>                                   | <b>Site:</b>                          | <b>County:</b>                          |
| <b>Site Operator:</b>                             |                                       | <b>Date:</b>                            |
| <b>Receiving Water:</b>                           | <b>Total Site Area (acres):</b>       | <b># Disturbed Acres:</b>               |
| <b>Inspector Name:</b>                            | <b>Inspector Qualifications:</b>      |   |
| <b>Inspection Type:</b> Weekly   or   ½ Inch Rain | <b>Days Since Last Rainfall</b> _____ | <b># Inches of Last Rainfall:</b> _____ |

### Field Inspection Observations

| BMP Category                    | Compliance |    |     | Field Indicators for Compliance   |
|---------------------------------|------------|----|-----|---|
|                                 | Yes        | No | N/A |   |
| Project Operations              |            |    |     | Notice of Intent (KPDES permit) and other local/state permits on file<br>BMP Plan on site and available for review<br>Project timing/schedule and activities following BMP Plan<br>Weekly inspection and rain-event reports on BMPs available for review<br>Diversions, silt checks/traps/basins, and silt fences/barriers installed prior to clearing<br>Grading and clearing conducted in phases to minimize exposed soil areas<br>No vegetation removal or operations in stream or sinkhole buffer area (25-50 ft min)<br>Rock pad in place on all construction site exits leading to paved roads<br>No sediment, mud, or rock on paved public roads in project area<br>Dust control if needed when working in residential areas during dry conditions |
| Drainage Management             |            |    |     | Upland runoff diverted around bare soil areas with vegetated/lined ditches/berms<br>Drainage channels exiting the site are lined with grass/blanket/rock and stabilized<br>Discharges from dewatering operations cleaned in silt fence enclosure or other filter<br>No muddy runoff leaving site after rains up to 1½ inches  |
| Erosion Protection              |            |    |     | Exposed soil seeded/mulched after 2 weeks if no work is planned for the next 7 days<br>Soils on steep slopes seeded/mulched/blanketed as needed to prevent rutting  |
| Sediment Barriers               |            |    |     | Silt fence, rock filter, or other sediment barrier below all bare soil areas on slopes<br>Barrier installed across slope on the contour, trenched in, posts on downhill side<br>Multiple sediment barriers at least 125 ft apart on unseeded slopes steeper than 4:1<br>J-hook interceptors along silt fence where heavy muddy flows run along fencing<br>No visible undercutting or bypassing or blowout of sediment barrier<br>Accumulated sediment is less than halfway to the top of sediment barrier   |
| Slope Protection                |            |    |     | Slopes tracked, disked, or conditioned after final grade is established<br>Slopes seeded, mulched, or blanketed within 21 days, no unmanaged rills or gullying<br>Heavy downslope flows controlled by lined down drain channels or slope drain pipes<br>No muddy runoff from slopes into streams, rivers, lakes, or wetlands  |
| Inlet Protection                |            |    |     | Inlet dam/device or filtration unit placed at all inlets receiving muddy flows<br>No visible undercutting, bypassing, or blowout of inlet protection dam or device<br>Accumulated sediment is less than halfway to the top of the inlet protection dam/device   |
| Outlet Protection               |            |    |     | High flow discharges have rock or other flow dissipaters of adequate sizing at outlet<br>Culvert outlets show no visible signs of erosion/scour, bank failure, or collapse  |
| Ditch and Channel Stabilization |            |    |     | No unmanaged channel bank erosion or bottom scouring visible within or below site<br>Ditches with slopes more than 3% have check dams spaced as needed, if not grassed<br>Ditch check dams tied in to banks, with center 4" lower than sides, and no bypassing<br>Ditches with slopes of up to 5% are thickly seeded with grass (minimum requirement)<br>Ditches 5% to 15% are lined with thick grass and erosion control blankets as needed<br>Ditches 15% to 33% are lined with thick grass and matting or other approved product<br>Ditches exceeding 33% are paved or lined with rock or other approved product   |

[illegible]

### ***SWPPP Files, Updates, and Amendments***

This SWPP Plan and related documents (e.g., NOI, inspection reports, USACE permits, etc.) will be kept on file at the construction site by \_\_\_\_\_ (name and title). The SWPPP will be updated by the Owner and/or Site Manager to reflect any and all significant changes in site conditions, selection of BMPs, the presence of any unlisted potential pollutants on site, or changes in the Site Manager, contractor, subcontractors, or other key information. Updates and amendments will be made in writing within 7 days and will be appended to the original BMP Plan and available for review.

### ***Stormwater Pollution Prevention Plan Certification***

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed: \_\_\_\_\_

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

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

I certify under penalty of law that I understand the terms and conditions of the general KPDES permit that authorizes the storm water discharges associated with the construction site activity identified as part of this certification.

### ***Subcontractor Certification***

The subcontractors below certify under penalty of law that they understand the terms and conditions of the general KPDES permit that authorizes the storm water discharges associated with the construction site activity identified as part of this certification.

Signed: \_\_\_\_\_

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

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

Signed: \_\_\_\_\_

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

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

Signed: \_\_\_\_\_

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

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

## **SECTION 9 – LANDSCAPING**

### **9.01 SCOPE**

The Work shall consist of the installation of all plant material as specified on the construction documents.

### **9.02 SUBMITTALS**

Product certificates signed by manufacturers certifying that their products comply with specified requirements.

Certification of grass seed or sod from seed vendor for each grass-seed mixture or sod stating the botanical and common name and percentage by weight of each species and variety, and percentage of purity, germination, and weed seed. Include the year of production and date of packaging or source for sod.

Material test reports from qualified independent testing agency indicating and interpreting test results relative to compliance of the following materials with requirements indicated.

1. Analysis of existing surface soil.
2. Analysis of imported topsoil.

Planting schedule indicating anticipated dates and locations for each type of planting.

### **9.03 QUALITY ASSURANCE**

9

- A. Installer Qualifications: Engage an experienced Installer who has completed landscaping work similar in material, design, and extent to that indicated for this Project and with a record of successful landscape establishment.
  1. Topsoil Analysis: Furnish a soil analysis made by independent soil-testing agency stating percentages of organic matter, inorganic matter (silt, clay, and sand), deleterious material, pH, and mineral and plant-nutrient content of topsoil.
  2. Report suitability of topsoil for growth of applicable planting material. State recommended quantities of nitrogen, phosphorus, and potash nutrients and any limestone, aluminum sulfate, or other soil amendments to be added to produce a satisfactory topsoil.

### **9.04 DELIVERY, STORAGE, AND HANDLING**

Packaged Materials: Deliver packaged materials in containers showing weight, analysis, and name of manufacturer. Protect materials from deterioration during delivery and while stored at site.

Seed: Deliver seed in original sealed, labeled, and undamaged containers.

Sod: Deliver sod in fresh-cut, moist and neatly rolled or stacked condition. Do not store in directly sunlight or heat, do not allow to dry out prior to installation.

#### **9.05 PROJECT CONDITIONS**

- A. Utilities: Determine location of above grade and underground utilities and perform work in a manner which will avoid damage. Hand excavate, as required.
- B. Excavation: When conditions detrimental to plant growth are encountered, such as rubble fill, adverse drainage conditions, or obstructions, notify Architect before planting.

#### **9.06 COORDINATION AND SCHEDULING**

Coordinate installation of planting materials during normal planting seasons for each type of plant material required.

#### **9.07 WARRANTY**

- A. General Warranty: The special warranty specified in this Article shall not deprive the Owner of other rights the Owner may have under other provisions of the Contract Documents and shall be in addition to, and run concurrent with, other warranties made by the Contractor under requirements of the Contract Documents.
- B. Special Warranty: Warrant the following living planting materials for a period of one year after date of Substantial Completion, against defects including death and unsatisfactory growth, except for defects resulting from lack of adequate maintenance, neglect, or abuse by Owner, abnormal weather conditions unusual for warranty period, or incidents that are beyond Contractor's control.
- C. Remove and replace dead planting materials immediately unless required to plant in the succeeding planting season.
- D. Replace planting materials that are more than 25 percent dead or in an unhealthy condition at end of warranty period.

#### **9.08 LAWN MAINTENANCE**

- A. Begin maintenance of lawns immediately after each area is planted and continue until acceptable lawn is established, but for not less than the following periods:
  - 1. Seeded Lawns: 60 days after date of Substantial Completion.
  - 2. When full maintenance period has not elapsed before end of planting season, or if lawn is not fully established at that time, continue maintenance during next planting season.



3. Maintain and establish lawns by watering, fertilizing, weeding, mowing, trimming, replanting, and other operations. Roll, regrade, and replant bare or eroded areas and remulch to produce a uniformly smooth lawn.
- B. WATERING: Provide and maintain temporary piping, hoses, and lawn-watering equipment to convey water from sources and to keep lawns uniformly moist to a depth of 4 inches (100 mm).
1. Water lawn at the minimum rate of 1 inch (25 mm) per week.
- C. MOWING: Mow lawns as soon as there is enough top growth to cut with mower set at specified height for principal species planted. Repeat mowing as required to maintain specified height without cutting more than 40 percent of the grass height. Remove no more than 40 percent of grass-leaf growth in initial or subsequent mowings. Do not delay mowing until grass blades bend over and become matted. Do not mow when grass is wet. Do not mow when soil is so wet as to leave permanent ruts in the lawn.
- D. POST-FERTILIZATION: Apply fertilizer to lawn after first mowing and when grass is dry.
1. Use fertilizer that will provide actual nitrogen of at least 1 lb per 1000 sq. ft. (0.5 kg per 100 sq. m) of lawn area.

## **9.09 MATERIALS**

### **A. GRASS**

1. Grass Seed: Fresh, clean, dry, new-crop seed complying with the Association of Official Seed Analysts' "Rules for Testing Seeds" for purity and germination tolerances.
2. Seed Mixture: Provide seed of grass species and varieties, proportions by weight, and minimum percentages of purity, germination, and maximum percentage of weed seed as indicated on Schedules at the end of this Section.

### **B. SOD**

1. Work under this Section shall be in conformance to Kentucky Department of Highways Standard Specifications Section 212 and shall include all labor, materials, equipment, and incidentals necessary to complete the Work. Fertilizer (10-10-10) and agricultural lime will be incorporated into a 3" deep sod bed and applied at a rate of 28 lbs./1,000 sq. ft. and 100 lbs./1,000 sq. ft., respectively. Sodding shall be done with Kentucky Bluegrass, Fescue, or other species approved by the LANDSCAPE ARCHITECT and available at the time of placement. DO NOT USE KY 31 FESCUE. Sod shall be kept moist for a minimum of four weeks. The desires of the owner and the species currently being used should be considered.

2. Ensure that 3" topsoil bed is finely graded and gently compacted to receive sod. Sod shall be placed in square sections or in rolls of 18" to 24" in width. Place so that edges butt up tightly, and provide sod pins where needed to prevent slippage of sod sections, especially on steeper slopes. Water immediately and continue watering per the maintenance schedule.

#### C. TOPSOIL

3. Topsoil: ASTM D 5268, pH range of 5.5 to 7, 4 percent organic material minimum, free of stones 1 inch (25 mm) or larger in any dimension, and other extraneous materials harmful to plant growth.
4. Topsoil Source:
  - a. Reuse surface soil on the site. Verify suitability of surface soil to produce topsoil meeting requirements and amend when necessary. Supplement with imported topsoil when quantities are insufficient. Clean topsoil of roots, plants, sods, stones, clay lumps, and other extraneous materials harmful to plant growth. Do not remove suitable topsoil from the site.
  - b. Topsoil Source: Import topsoil from off-site sources. Obtain topsoil from naturally well-drained sites where topsoil occurs at least 6 inches (100 mm) deep; do not obtain from bogs or marshes.
  - c. Topsoil Source: Amend existing surface soil to produce topsoil. Supplement with imported topsoil when required.

#### D. SOIL AMENDMENTS

##### 1. Additives

- d. Lime: ASTM C 602, Class T, agricultural limestone containing a minimum 80 percent calcium carbonate equivalent, with a minimum 99 percent passing a No. 8 (2.36 mm) sieve and a minimum 75 percent passing a No. 60 (250 micrometer) sieve.
- e. Provide lime in the form of dolomitic limestone.
- f. Aluminum Sulfate: Commercial grade, unadulterated.
- g. Sand: Clean, washed, natural or manufactured sand, free of toxic materials.
- h. Perlite: Horticultural perlite, soil amendment grade.

- i. Peat Humus: Finely divided or granular texture, with a pH range of 6 to 7.5, composed of partially decomposed moss peat (other than sphagnum), peat humus, or reed-sedge peat.
- j. Peat Humus: For acid-tolerant trees and shrubs, provide moss peat, with a pH range of 3.2 to 4.5, coarse fibrous texture, medium-divided sphagnum moss peat or reed-sedge peat.
- k. Sawdust or Ground-Bark Humus: Decomposed, nitrogen-treated, of uniform texture, free of chips, stones, sticks, soil, or toxic materials.
  - 1) When site treated, mix with at least 0.15 lb (2.4 kg) of ammonium nitrate or 0.25 lb (4 kg) of ammonium sulfate per cu. ft. (cu. m) of loose sawdust or ground bark.
- i. Manure: Well-rotted, unleached stable or cattle manure containing not more than 25 percent by volume of straw, sawdust, or other bedding materials; free of toxic substances, stones, sticks, soil, weed seed, and material harmful to plant growth.
- 2. Herbicides: EPA registered and approved, of type recommended by manufacturer.
- 3. Water: Potable.

#### E. FERTILIZER

- 1. Bonemeal: Commercial, raw, finely ground; minimum of 4 percent nitrogen and 20 percent phosphoric acid.
- 2. Superphosphate: Commercial, phosphate mixture, soluble; minimum of 20 percent available phosphoric acid.
- 3. Commercial Fertilizer: Commercial-grade complete fertilizer of neutral character, consisting of fast- and slow-release nitrogen, 50 percent derived from natural organic sources of urea-form, phosphorous, and potassium in the following composition:
  - a. Composition: Nitrogen, phosphorous, and potassium in amounts recommended in soil reports from a qualified soil-testing agency.
- 4. Slow-Release Fertilizer: Granular fertilizer consisting of 50 percent water-insoluble nitrogen, phosphorus, and potassium in the following composition:
  - a. Composition: Nitrogen, phosphorous, and potassium in amounts recommended in soil reports from a qualified soil-testing agency.

## **9.10 INSTALLATION**

### **A. EXAMINATION**

Examine areas to receive landscaping for compliance with requirements and for conditions affecting performance of work of this Section. Do not proceed with installation until unsatisfactory conditions have been corrected.

### **B. PLANTING SOIL PREPARATION**

Before mixing, clean topsoil of roots, plants, sods, stones, clay lumps, and other extraneous materials harmful to plant growth.

Mix soil amendments and fertilizers with topsoil at rates indicated. Delay mixing fertilizer if planting does not follow placing of planting soil within a few days.

For lawns, mix planting soil either prior to planting or apply on surface of topsoil and mix thoroughly before planting.

Mix lime with dry soil prior to mixing fertilizer. Prevent lime from contacting roots of acid-tolerant plants.

Apply phosphoric acid fertilizer, other than that constituting a portion of complete fertilizers, directly to subgrade before applying planting soil and tilling.

### **C. CLEANUP AND PROTECTION**

During landscaping, keep pavements clean and work area in an orderly condition. Protect landscaping from damage due to landscape operations, operations by other contractors and trades, and trespassers. Maintain protection during installation and maintenance periods. Treat, repair, or replace damaged landscape work as directed.

### **D. DISPOSAL OF SURPLUS AND WASTE MATERIALS**

Disposal: Remove surplus soil and waste material, including excess subsoil, unsuitable soil, trash, and debris, and legally dispose of it off the Owner's property.

### **E. SEED MIXTURES SCHEDULE**

Seed shall be a blend of Turf Type Tall Fescue with perennial and annual rye:

Provide a minimum of two types of Turf Type Fescue from the following list with Falcon II, Houndog 5, Finelawn Petite, and Crossfire II. DO NOT USE KY 31 FESCUE.

Provide either Calypso II or Manhattan II type of Perennial Ryegrass.

Percent by Weight

|                       |    |
|-----------------------|----|
| Turf Type Tall Fescue | 70 |
| Perennial Ryegrass    | 20 |
| Annual Ryegrass       | 10 |

Apply mix at a rate of 8 lbs./1000 sq. ft., fertilize with 3 lbs. each of nitrogen, phosphate and potash per 1000 sq. ft. Hydro-mulch with 50 lbs. wood fiber per 1000 sq. ft. and 150 gallons per 1000 sq. ft.

## **SECTION 10 – STORM DRAINAGE**

### **10.01 WORK INCLUDED**

- A. This Section includes all labor, materials, equipment and related items required to complete the work of storm drainage shown on the Drawings and specified herein.
- B. This Section does not include the following related items:
  - 1. Clearing and grubbing.
  - 2. Earthwork.
  - 3. Pavements and curbs.
  - 4. Site Utilities.
  - 5. Electrical Work.

### **10.02 PERMITS AND CODES**

The intent of this Section of the Specifications is that the Contractor's bid on the Work covered herein shall be based upon the Drawings and Specifications, but that the Work shall comply with all applicable codes and regulations as amended by any waivers.

### **10.03 LOCAL STANDARDS**

The term "local standards" as used herein means the standards of design and construction of the Kentucky Department of Highways.

### **10.04 STORM STRUCTURES**

Storm curb inlets, surface inlets, catch basins, drain basins, manholes, connections to existing manholes and headwalls shall be constructed and/or removed where and as indicated on the plans and/or as directed by the ENGINEER. Curb Boxes shall conform to the local municipality having jurisdiction or the Kentucky Department of Highway Standard Drawings.

### **10.05 CIRCULAR REINFORCED CONCRETE PIPE**

- A. Pipe materials shall conform to the requirements of the Kentucky Department of Highways.
- B. Reinforced concrete pipe shall meet ASTM C76 AASHTO M170, and shall be in the diameter on the Drawings and Class III unless noted otherwise.
- C. Pipe joints shall be bell and spigot construction in accordance with ASTM C443.
- D. Rubber gaskets shall be Forsheda 138 gaskets in accordance with ASTM C 443 or approved equal.

- E. Pipe shall be as manufactured by Independent Concrete Pipe Co. or approve equal.

#### **10.06 ELLIPTICAL REINFORCED CONCRETE PIPE**

- A. Elliptical reinforced concrete pipe shall conform to the requirements of the Kentucky Department of Highways.
- B. Elliptical reinforced concrete pipe shall meet ASTM C507 and in the size on the Drawings and Class III unless noted otherwise.
- C. Pipe joints shall be tongue and groove construction and shall be filled with butyl mastic sealant during installation as recommended by pipe manufacturer.
- D. Pipe shall be manufactured by Independent Concrete Pipe Co. or approved equal.

#### **10.07 CORRUGATED METAL PIPE**

- A. Corrugated metal pipe shall conform to the requirements of the Kentucky Department of Highways.
- B. Corrugated aluminum pipe shall meet AASHTO M196, Type I and AASHTO M190 Type C.
- C. Corrugated steel pipe shall meet AASHTO M36, Type I and AASHTO M190, Type C.
- D. Pipe joints shall be the band coupler type, not less than 5 (5) corrugations wide as supplied by the pipe manufacturer.

#### **10.08 PRECAST CONCRETE BOX CULVERTS**

- A. Precast reinforced concrete box culverts shall meet ASTM C789 and/or ASTM C850 and shall be in the size shown on the Drawings and Class III unless noted otherwise.
- B. Joints shall be tongue and groove construction and shall be filled with butyl mastic sealant during installation as recommended by culvert manufacturer.
- C. Precast reinforced concrete box culverts shall be as manufactured by Independent Concrete Pipe Co. or approved equal.

#### **10.09 PRECAST CONCRETE MANHOLES**

- A. Manholes, frames, and covers shall be in accordance with Sanitation District No. 1 of Northern Kentucky specifications.

#### **10.10     PRECAST CONCRETE INLET/OUTLET TREATMENTS**

- A. Precast concrete inlet/outlet treatments shall meet the requirements of the Kentucky Department of Highways and of the type and size shown on the Drawings.
- B. Castings shall be cast iron as manufactured by Neenah, Hoe, McKinley, Flockhart or approved equal.

#### **10.11     HDPE PIPE AND FITTINGS**

- A. The use of HDPE pipe shall meet all local and state requirements.
- B. Corrugated HDPE Drainage Pipe and Fittings shall be ADS N-12 smooth walled HDPE or approved equal.
- C. Couplings shall have water tight seals.

#### **10.12     EXISTING IMPROVEMENTS**

Maintain in operating condition all active drains and other utilities encountered in the Project area. Repair to the satisfaction of the Engineer any surface or subsurface improvement damaged during the course of the Work (unless such improvement is shown to be abandoned or removed), whether or not such improvement is shown on the Drawings.

#### **10.13     PROTECTION OF PIPING LAID IN AREAS OF FILL**

Underground drains specified in this Section shall not be laid in areas of fill prior to the actual performance of the grading operation, unless the depth of the cover over such utilities below existing ground surface is at least 30 inches. Such depth of cover requirement may be reduced provided the pipe is protected by concrete cradling, encasement or other manner satisfactory to the Engineer.

#### **10.14     TRENCHING AND BACKFILLING**

- A. General: Unless otherwise directed by the Engineer, trenches in which storm drainage lines are to be laid shall be excavated in open cut to the depths shown on the Drawings. In general, this shall be interpreted to mean that machine excavation in earth shall extend to an elevation permitting minimum depth of bedding material below.
- B. Width of Trench: Excavate trenches of sufficient width to provide free working space on each side of the pipe and to permit proper backfilling around the pipe.
  - 1. Pipe trenches shall be made as narrow as practicable and shall not be widened by scraping or loosening material from the sides. Every effort shall be made to keep the sides of the trenches firm and undisturbed until backfilling has been completed and consolidated.



2. Trenches shall be excavated with approximately vertical sides between the elevation of the center of the pipe and an elevation 1 foot above the top of the pipe.
- C. **Sheeting and Bracing:** Sheet and brace trenches as necessary to protect workmen and adjacent structures. Comply with local regulations, or, in the absence thereof, with the "Manual of Accident Prevention in Construction", of the Associated General Contractors of America, Inc. Do not remove sheeting until trench is backfilled sufficiently to protect pipe and prevent injurious caving.
  - D. **Water Removal:** Keep trenches free from water while construction therein is in progress. Under no circumstances lay pipe or appurtenances in water. Pump or bail water from bell hole to permit proper jointing of pipes. Conduct the discharge from trench dewatering to sediment controlled areas as specified in Section 02100.
  - E. **Disposition of Existing Utilities:** Rules and regulations governing the respective utilities shall be observed in executing all work under this heading. Active utilities not shown on the Drawings shall be protected or relocated in accordance with written instructions of the Engineer and the Contract sum will be adjusted for such additional work. Inactive and abandoned utilities encountered in trenching operation shall be removed, plugged, or capped. In absence of specific requirements, plug or cap such utility lines at least 3 feet from new ditch line or as required by the local regulations.
  - F. **Unclassified Excavation:** Materials to be excavated shall be unclassified, and shall include the removal of earth, rock, or other materials encountered in the excavating to the depth and extent shown or indicated on the Drawings. In the case of any change in the excavation, ordered in writing by the Engineer, the resulting changes in quantities shall be accurately computed, its value shall be determined in accordance with applicable Unit Prices agreed upon between the Owner and Contractor or subcontractors, and the Contract sum shall be adjusted accordingly.
    1. **Blasting:** Obtain written approval of method from the Engineer before proceeding with rock excavation. Cover blasts with heavy timbers or mats. Set off no blasts within 25 feet of pipe already laid in trench. Protect earth backfill pipe already laid. Explosives shall be stored, handled and employed in accordance with the provisions of the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, Inc.
  - G. **Pipe Bedding:** Storm drainage pipe shall be laid on a bed of granular material except when a concrete encasement situations occurs. All pipe bedding material shall be Class I select granular material approved by the Engineer and shall be placed to a depth of 4 inches in an earth trench and 6 inches in a rock trench. Granular bedding shall be graded to provide for a uniform and continuous support beneath the pipe at all points. Bell holes shall be provided so that after placement, only the barrel of the pipe receives bearing pressure from the supporting material.
    1. After each pipe has been aligned, and placed in final position, granular material as

shown on the Drawings, shall be deposited and densified under the pipe haunches and on each side of the pipe up to the spring line of the pipe to prevent lateral displacement and hold the pipe in proper position during subsequent pipe jointing, bedding, and backfilling operations.

2. In wet, yielding and mucky locations where the pipe is in danger of sinking below grade, the pipe must be weighted or secured permanently in place by such means as will prove effective. In areas where a high water table exists, extreme care shall be taken in the placement of the backfill material to prevent flotation of the pipe at any time.
  3. Where an unstable (i.e. water, mud, etc.) trench bottom is encountered, stabilization of the trench bottom is required. This is to be accomplished by undercutting the trench depth and replacing to grade with a foundation of aggregate material. The depth of the foundation is dependent upon the severity of the trench bottom. The size of aggregate used in the foundation will be determined by the condition of the unstable material. Once the trench bottom has been stabilized, the required Class I bedding can be placed.
- H. Special Supports: Whenever, in the opinion of the Engineer, the soil at or below the requisite pipe grade is unsuitable for supporting pipe and appurtenances specified in this Section after stabilization as herein before described, special supports shall be provided as the Engineer may direct, and the Contract sum will be adjusted.
- I. Backfilling: Backfill trenches only after pipe has been inspected, and locations of pipe lines and appurtenances, and rock excavation, if any, have been recorded. Pipes shall be backfilled as herein specified or as otherwise shown on the Drawings.
1. Initial Backfill: This backfill is defined as that material which is placed over the pipe from the spring line of the pipe, to a point 12 inches above the top of the pipe. The backfill shall be Class I aggregate material as detailed on the Drawings.
  2. Final Backfill: The trench shall be backfilled from a point 12 inches above the top of the pipe to subgrade with earth material reasonably free of any rocks. Compaction shall meet the requirements for the adjacent embankment.
  3. Walking or working on the completed pipelines, except as may be necessary in backfilling, will not be permitted until the trench has been backfilled to a point 6 inches above the top of the pipe.
  4. The Class I aggregate material used in backfilling shall be No. 9 crushed stone or clean sand meeting the requirements of the Kentucky Department of Highways.

#### **10.14     TESTING**

- A. After the piping system has been brought to completion, and prior to final inspection, the Contractor shall rod out the entire system by pushing through each individual line in the system appropriate tools for the removal from the lines of any and all dirt, debris, and trash.
- B. During the final inspection, the Engineer will inspect each individual line, either by use of lights, television or other means at his disposal to determine whether the completed lines are true to line and grade as laid out or as shown on the Drawings.

1. The Engineer may require that the Contractor pass through the system under its own momentum a wooden ball of a diameter 1 inch less than the minimal diameter of the pipe, except that no ball larger than 8 inches in diameter shall be used.
2. All lines or sections of line that are found to be laid improperly with respect to line or grade, that are found to contain broken or leaking sections of pipe, or are obstructed in such a manner that they cannot be satisfactorily corrected otherwise, shall be removed and replaced at the Contractor's expense.

#### **10.15 FINAL INSPECTION**

At the time of final inspection of the Work performed under the Contract, the storm drainage system covered by this Section shall be complete in every respect and in perfect operating condition. All surplus materials of every character resulting from the Work of this Section shall have been removed. Pipes shall be free from sand, silt, or other obstructions. Any defects discovered in the storm drainage subsequent to this inspection shall have been corrected.

#### **10.16 CERTIFICATES**

Furnish to the Engineer affidavits from the manufacturers of pipe, furnished and installed under this Section, certifying that such materials delivered to the Project conform to the requirements of this Section.

## **SECTION 11 – ROADWAY & DRAINAGE EXCAVATION**

### **11.01 SCOPE**

Roadway and drainage excavation shall consist of the removal and satisfactory disposal of all materials taken from within limits of the work contracted, meaning the calculated material lying between the original groundline and the excavation limits established or approved by the ENGINEER as shown on the final cross sections or grading plan.

### **11.02 GENERAL**

Included in this work shall be excavation for widened cuts and roadbeds embankment subgrades, under-cutting subgrades in cut sections, shoulders: slopes, removal of unsuitable material, ditches, waterways, intersections, approaches, balance excavation, and inlet and outlet ditches, all as indicated on the plans or as directed.

Roadway and drainage excavation shall also include removal and satisfactory disposal of miscellaneous structures removed from within the limits of the roadway and drainage cross sections such as, but not limited to, all types of pavements and pavement bases, whether rigid or flexible; sidewalks; all curbs and curbs and gutters; and all conduits that have no salvage value, such as unserviceable drainage pipe, sewer pipe, waterlines, and other unserviceable utility lines. The plans may, or may not indicate the exact locations of the various types and quantities of these miscellaneous items to be removed and disposed of; however, it is the intent of these specifications that the removal of any such items that fall within the limits of the roadway and drainage cross sections as here in before defined, whether or not shown on the plans, shall be included in Roadway and Drainage Excavation.

Except as otherwise specifically stated roadway and drainage excavation shall also include inlet and outlet ditches, regardless of the classification of the material encountered, whether shown or not shown on the plans and whether or not on the right-of-way as shown. When the work is extended by the OWNER beyond the project area limits shown on the plans, easements or additional property will be obtained by the OWNER.

All drilling, grinding, and sawing of rock, shale, concrete and other similar dust producing materials shall be performed in accordance with the requirements of the ENGINEER.

Clearing and grubbing operations for excavation areas shall be completed prior to beginning excavation operations. The CONTRACTOR shall be responsible for and shall take all necessary precautions to protect and preserve any and all existing culverts, pipelines, conduits, subdrains, or parts thereof which may be affected by his operations on the contract and which, in the judgment of the ENGINEER, may be continued in use without any change. The CONTRACTOR shall, at his own expense, satisfactorily repair or replace any damaged part of any such culvert, pipeline, conduit, or subdrain which may result from his operations or negligence during the life of the contract.

During construction, all areas affected by excavation shall be maintained at all times in such condition that it will be well drained.

### **11.03 CLASSIFICATION**

Without regard to the materials encountered, all roadway and drainage excavation shall be **unclassified**. It shall be distinctly understood that any reference to rock, earth, or any other material on the plans or cross sections, whether in numbers, words, letters, or lines, is solely for the OWNER'S information and is not to be taken as an indication of classified excavation or the quantity of either rock, earth, or any other material involved.

The bidder must draw his own conclusions as to the conditions to be encountered. The OWNER does not give any guarantee as to the accuracy of the data and no claim will be considered for additional compensation when the materials encountered are not in accord with the classification shown.

### **11.04 SLOPES**

All excavation shall be performed in such a manner as will ensure against removing or loosening any material outside of the required slopes. Slopes shall be shaped to reasonably close conformity with the lines and cross sections shown on the plans, with no deviations, therefrom readily discernible from the road, except as otherwise directed. All rock cut slopes shall be left with a reasonable uniform surface and all loose and overhanging rock shall be removed. Under no condition shall holes be gouged or dug in back slopes or in embankment slopes.

The slopes in cuts may be varied by the ENGINEER during construction, depending upon the material encountered in excavation. The cuts may be widened and the slopes may be varied to secure sufficient material for the formation of embankment and shoulders, to prevent landslides, to improve sight distance, or for any other reasons that such widening or variations are deemed to be to the best advantage of the work. When a cut is made on any section of the roadway in any material that may slide, the excavation shall be removed to the slope lines as designated on the plans or as directed, and no vertical slopes will be allowed during the process of excavation of such cuts, except in stage construction when material is left in cuts for future shoulder construction. No payment will be made for any excavated material, which is used for purposes other than those designated.

### **11.05 DITCHES**

Ditches shall include inlet and outlet ditches and such other ditches as may be required for the satisfactory completion of the work.

### **11.06 USE OF EXCAVATED MATERIALS**

All suitable material removed from excavation shall be used, insofar as practicable, in the formation of embankments, subgrade, or shoulders; as backfill for structures or for other purposes shown on the plans or as directed. No payment will be made for any excavated materials used for any purpose other than that indicated on the plans or approved.

All sod and soft or spongy material shall be removed and disposed of as directed. Such materials shall not be used in the construction of grade, except as provided in the current KYTC Road and Bridge Construction Standard Specifications.

All rocks and boulders, when directed, shall be placed in the embankments, provided the embankments are of sufficient depth to provide 11 inches or more soil cover over such rocks or boulders placed within the shoulder limits. Such rock and boulders shall be placed under the shoulders rather than under the pavement foundation when the embankment is constructed principally of soils.

Material wasted off the project area shall be placed on sites obtained by the CONTRACTOR at no cost to the OWNER. All waste shall be placed to avoid the obstruction of drainage, and the wasted material shall be seeded and protected using the appropriate application rates of agricultural limestone, fertilizer, seed, and mulch as directed on the BMP Plan.

The CONTRACTOR shall be responsible for all permitting and legalities associated with offsite disposal of materials. The CONTRACTOR shall be responsible for any fines associated with not complying with sediment erosion control plans, releases of sewage, etc.

The CONTRACTOR shall furnish to the OWNER copies of written agreement with the property OWNER, approval of the OWNER(S) of utilities of any nature existing within the proposed waste area.

#### **11.07 ROADBED**

In addition to the limits of the roadbed, the work required herein shall extend to the ditch lines or curb lines in cuts when so directed. Work under this section shall conform to the KYTC Road & Bridge Specifications current edition.

Where rock is encountered in the excavation, it shall be removed between ditch lines or curb lines to a depth below the required grade as shown on the plans with no points of rock projecting above such depth. The final surface of the rock shall be left so that complete drainage will be provided, and no water will be pocketed at any point. The refill over this surface shall be made of selected materials and shall contain no stone or spalls larger than 4 inches. All refill shall be placed in layers not exceeding 11 inches in depth, loose measurement, and compacted. No allowance will be made for excavation and refill material to a greater depth below the required grade than as shown on the plans. Where not designated on the plans, the refill material shall be selected by the ENGINEER.

In cut sections the roadbed, whether it consists of existing material or refill material, shall be compacted in accordance with the requirements of the current KYTC Road and Bridge Construction Standard Specifications.

When the material in place does not contain sufficient moisture to obtain proper compaction, the roadbed shall be thoroughly scarified and broken to minimum depth of 6 inches, the moisture content increased as directed, and the roadbed compacted. Material unsuitable for the roadbed, when encountered at subgrade elevation, shall be removed to such depths as indicated on the plans or as

directed, and disposed of as directed and replaced with #2 stone. Material that is unstable due to excessive moisture but that is otherwise suitable for the roadbed shall either be scarified, allowed to dry, and compacted; or removed, dried, and used for refill or embankment, as directed by the ENGINEER. Manipulation to speed drying will be permitted. When necessary, change order procedures shall be followed. Change order shall be reviewed by Engineer and approved by Owner prior to work being performed.

The CONTRACTOR shall conduct roadway excavation operations so that a sufficient quantity of selected materials is available, stockpiled, or otherwise reserved for providing the required volume of material necessary to complete the roadbed in accordance with the plans and as indicated herein.

#### **11.08 AUTHORIZED ADJUSTMENTS**

Adjustments to the design quantities of Roadway Excavation authorized by the OWNER or ENGINEER will be made only for the following purposes:

Include changes in the quantity of work due to benching, changing slopes or grades, removing slides, and any other procedures required by the OWNER or ENGINEER on the project.

#### **11.09 MISCELLANEOUS ITEMS**

Removing and salvaging or disposal of all other items within the project area or easements not included in this Section such as guardrails, headwalls, inlet boxes, etc., whether shown on the plans or not shall be considered incidental to the contract and no direct payment shall be allowed, unless otherwise provided.

In removing manholes, catch basins, and inlets, any live sewers connected thereto shall be rebuilt and properly reconnected, and satisfactory by-pass service shall be maintained during such construction operations.

## **SECTION 12 – FINAL CLEANUP**

### **12.1 SCOPE**

The work will not be considered as completed, and final payment will not be made, until the right-of-way and all ground occupied by the CONTRACTOR in connection with the work has been cleared of all rubbish, equipment, excess materials, temporary structures, and weeds. Rubbish and all waste material of whatever nature shall be disposed of in waste areas provided by the CONTRACTOR. All property, both public and private, which has been damaged in the execution of the work, shall be replaced or restored in an acceptable manner. All ditches shall be drained, and all space shall be left unobstructed and in such condition as acceptable to the ENGINEER.



## **APPENDIX INDEX**

Bid Bond

## BID BOND

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

---

BIDDER *(Name and Address):*

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

OWNER *(Name and Address):*

City of Dayton  
514 Sixth Avenue  
Dayton, KY 41074

BID

Bid Due Date:  
Description *(Project Name and Include Location):*

BOND

Bond Number:  
Date *(Not earlier than Bid due date):*  
Penal sum \_\_\_\_\_

(Words)

\$ \_\_\_\_\_

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

**BIDDER**

**SURETY**

\_\_\_\_\_  
Bidder's Name and Corporate Seal

(Seal)

\_\_\_\_\_  
Surety's Name and Corporate Seal

(Seal)

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

By: \_\_\_\_\_  
Signature (Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

*Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.*

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.