

**PROJECT MANUAL**  
for the Construction of  
**[PROJECT NAME]**  
CIP No. [Number]  
City of [City], Virginia  
**[Date]**

**VOLUME 1 OF [#]**



**[Engineer's Name]**  
**[Address]**  
**[Address]**

**HAMPTON ROADS SANITATION DISTRICT**

**[PROJECT NAME]**

**PROJECT MANUAL**

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# **BIDDING REQUIREMENTS**

## ADVERTISEMENT FOR BIDS

Solicitation No. [#]

PROJECT: [PROJECT NAME]

LOCATION: [City or County of Project], Virginia

ENGINEER: [Name]  
[Address]

The Hampton Roads Sanitation District (HRSD) (Owner) will receive electronic Bids for the above referenced project online through Owner's Online Oracle Enterprise Resource Planning (ERP) system (<https://www.hrsd.com>) by [date] no later than 2:00 p.m. local time. Failure to submit a Bid through Owner's Online Oracle ERP system prior to the due date and time will be cause for rejection by Owner. Interested Contractors (Bidders) can attend the virtual bid opening at the following link Bid Opening [add link to Bid Opening] or calling [number] and using Conference ID [number].

Procedures for submitting a Bid, claiming an error, withdrawing of Bids and other pertinent information are contained in the Instructions to Bidders. Owner reserves the right to reject any or all Bids, waive any informalities, or negotiate with the low Bidder as described in the Instructions to Bidders.

Bid Documents may be viewed by logging into Owner's Online Oracle ERP system. All Bidders must be registered in advance of submitting a Bid. Technical questions should be submitted through Owner's Online Oracle ERP system as an online discussion. Questions related to submitting a Bid or using the online system should be directed to the ERP HelpDesk at [erphelp@hrsdc.com](mailto:erphelp@hrsdc.com) or 757-460-7318 or [CS Name] at [name]@hrsdc.com.

Contractor registration in accordance with Title 2.2, Chapter 43 and Title 54.1, Chapter 11, Code of Virginia is required.

The Project or Work consists of [General Project Description].

**[OPTIONAL]** A pre-bid conference will be held at [Location] on [date] at [#]:00 a/p.m. local time. Attending the conference [shall/shall not] be mandatory for those submitting a Bid. **[OPTIONAL]** A site visit will be held immediately following the pre-bid conference.

[or]

**[OPTIONAL]** A virtual pre-bid conference will be held on [date] at [#]:00 a/p.m. local time at the following link Pre-bid Conference [add link to Pre-Bid Conference] or calling [number] and using Conference ID [number]. Attending the conference [shall/shall not] be mandatory for those submitting a Bid.

A Bid Bond in the amount of 5 percent of the Bid shall be submitted electronically with each Bid.

**[OPTIONAL - VCWRLF]** This project is being funded in part under the Virginia Clean Water Revolving Loan Fund (VCWRLF). Bidders shall comply with the President's Executive Order No. 11246 (Prohibiting discrimination in employment regarding race, color, creed, sex or national origin), No. 12138 and No. 11625 (Regarding MBE/WBE utilization). Bidders shall also comply with the Civil Rights Act of 1964.

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PROJECT NAME  
Advertisement for Bids  
DATE

Bidders must certify that they do not and will not maintain or provide for their employees any facilities that are segregated on basis of race, color, creed or national origin.

**[OPTIONAL - WIFIA]** This project is being funded in part under the Water Infrastructure Finance and Innovation Act (WIFIA). Bidders shall comply with the President's Executive Order No. 12549, United States Code Title 31, Section 1352, and with the following federal non-discrimination requirements: Civil Rights Act of 1967, Rehabilitation Act of 1973, The Age Discrimination Act of 1975, Federal Water Pollution Control Act Amendments of 1972, Title 40, Part 7 of the Code of Federal Regulations, and President's Executive Order No. 11246.

# INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACT

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## ARTICLE 1—GENERAL INFORMATION

### 1.01 Definitions

- A. 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:
1. *Bidder*—The corporation, partnership, limited liability company, or combination thereof, acting directly or through an authorized representative, formally submitting a Bid directly to Owner, as distinct from a sub-bidder, who submits a Bid to a Bidder.
  2. *Bidding Documents*—The Advertisement for Bids, Instructions to Bidders, and the proposed Contract Documents (including all Addenda issued prior to the receipt of Bids).
  3. *Issuing Office*—The office from which the Bidding Documents are to be issued.
  4. *Sub-bidder*—An entity to whom the Bidder intends to subcontract any part of the Work.
  5. *Successful Bidder*—The lowest, responsible, and responsive Bidder to whom Owner (on the basis of the Engineers and Owner’s evaluation as hereinafter provided) makes an award.
- B. In addition to terms specifically defined, terms with initial capital letters in the Instructions to Bidders include references to identified articles and paragraphs, and the titles of other documents and forms.

### 1.02 Bidder Registration

- A. All Bidders must register on Hampton Roads Sanitation District’s (HRSD) (Owner) Online Oracle Enterprise Resource Planning (ERP) system prior to submitting a Bid. The following information shall be required:
1. Company (Supplier) Name.
  2. Taxpayer Identification Number.
  3. Primary Contact.
  4. Mailing Address, E-Mail Address, and Telephone Number.
  5. National Institute of Governmental Purchasing (NIGP) Commodity Codes; go to <https://www.hrsd.com/engineering-task-submittals> to obtain the Engineering’s Design and Construction NIGP Commodity Codes used for Solicitations.
  6. Copy of most recent W-9 Form.
  7. Other information as required.

### 1.03 Additional Information

- A. Except as amended by the Contract Documents, the procurement activities for Owner are governed by the Owner’s Procurement Policy as adopted by the Owner’s Commission (Commission), the Owner’s Enabling Act, the Virginia Public Procurement Act (VPPA), and other state and federal statutes and regulations as appropriate. A copy of Owner’s Procurement Policy is available online at Owner’s website and is hereby made a part of this RFP; go to <https://www.hrsd.com/procurement-manuals-guidelines> and select the

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Procurement Policy (pdf) link.

## ARTICLE 2—BIDDING DOCUMENTS

- 2.01 Bidder shall obtain a complete set of Bidding Documents by logging into Owner’s Online Oracle ERP system. See the Agreement for a list of the Contract Documents. It is the Bidder’s responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers. Neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.02 Bidding Documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download or distribution of the Bidding Documents does not confer a license or grant permission or authorization for any other use. Authorization to download documents, or other distribution, includes the right for registered users to print documents solely for their use, and the use of their prospective Subcontractors and Suppliers.

## ARTICLE 3—QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder’s qualifications to perform the Project or Work, after submitting its Bid and within 48 hours, the apparent low Bidder and other Bidders as requested by the Owner or the Engineer shall submit the following information:
- A. Completed copy of attached Questionnaire; **[ONLY IF PROJECT FUNDING: including the Bidder Compliance Statement/Certification Regarding Equal Employment Opportunity.]** Qualifications required from the Bidder shall be based on prior experience of the corporation, partnership, limited liability company, or combination thereof, as identified in the Bid response as described in Paragraph 3.01.B. Prior experience from a Sub-bidder shall not be accepted as experience for the Bidder.
  - B. The Bidder shall document specific experience in the construction of **[Update with Qualifications]**. Give project titles, Owner’s and Engineer’s names, addresses, and telephone numbers, and project values. Attach additional pages to the Questionnaire as necessary to provide this information.
  - C. **[ONLY IF PROJECT FUNDING]** Bidders need to verify and confirm that they are utilizing the latest Davis Bacon Wage rates prior to submitting its Bid.
  - D. **[ONLY IF PROJECT FUNDING]** Documentation on Minority and Women’s Business Enterprises (MBE/WBE) solicitation efforts.
  - E. **[ONLY IF VCWRLF]** For the Virginia Clean Water Revolving Loan Fund (VCWRLF) Program Requirements, a signed copy of the American Iron and Steel (AIS) Certification Statement (Attachment #6).
  - F. **[ONLY IF WIFIA]** Water Infrastructure Finance and Innovation Act (WIFIA) Program Requirements, a completed and signed copy of the Certification Regarding Lobbying (Appendix A), Disclosure of Lobbying Activities (Appendix B), and American Iron and Steel (AIS) Certification Statement (Appendix D).
  - G. Additional information may be requested after the Questionnaires are received if, in the opinion of the Owner or the Engineer, the information submitted is insufficient to complete the evaluation of the Bidder.
- 3.02 Bidder shall meet the on-site work force requirements as defined in the Supplementary

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Conditions Paragraph 7.07.

- 3.03 A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.
- 3.04 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.

#### **ARTICLE 4—PRE-BID CONFERENCE**

- 4.01 If a pre-bid conference is to be held, the date, time, and location will be stated in the Advertisement for Bids. The pre-bid conference is [mandatory/non-mandatory] and Bidders are [required/encouraged] to attend and participate. Representatives of Owner and Engineer will be present to discuss the Project.
- 4.02 Information presented at the pre-bid conference does not alter the Contract Documents. Owner will issue Addenda to make any changes to the Contract Documents that result from discussions at the pre-bid conference. Information presented, and statements made at the pre-bid conference will not be binding or legally effective unless incorporated in an Addendum.

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

##### 5.01 *Site and Other Areas*

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

##### 5.02 *Existing Site Conditions*

###### A. *Subsurface and Physical Conditions; Hazardous Environmental Conditions*

- 1. The Supplementary Conditions identify the following regarding existing conditions at or adjacent to the Site:
  - a. Those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data.
  - b. Those drawings known to Owner of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data.
  - c. Reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
  - d. Technical Data contained in such reports and drawings.
- 2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data,

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interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.
4. **[OPTIONAL]** *Geotechnical Baseline Report/Geotechnical Data Report*: The Bidding Documents contain a Geotechnical Baseline Report (GBR) and Geotechnical Data Report (GDR).
  - a. As set forth in the Supplementary Conditions, the GBR describes certain select subsurface conditions that are anticipated to be encountered by Contractor during construction in specified locations (“Baseline Conditions”). The GBR is a Contract Document.
  - b. The Baseline Conditions in the GBR are intended to reduce uncertainty and the degree of contingency in submitted Bids. However, Bidders cannot rely solely on the Baseline Conditions. Bids should be based on a comprehensive approach that includes an independent review and analysis of the GBR, all other Contract Documents, Technical Data, other available information, and observable surface conditions. Not all potential subsurface conditions are baselined.
  - c. Nothing in the GBR is intended to relieve Bidders of the responsibility to make their own determinations regarding construction costs, bidding strategies, and Bid prices, nor of the responsibility to select and be responsible for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.
  - d. As set forth in the Supplementary Conditions, the GDR is a Contract Document containing data prepared by or for the Owner in support of the GBR.
- B. *Underground Facilities*: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or other.
- C. *Adequacy of Data*: 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 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to Hazardous Environmental Conditions at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Conditions 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 5.06 of the General Conditions.

5.03 **[OPTIONAL]** *Other Site-related Documents*

- A. In addition to the documents regarding existing Site conditions referred to in Paragraph 5.02.A, the following other documents relating to conditions at or adjacent to the Site are known to Owner and made available to Bidders for reference:

Drawings/Report Title	Date of Drawings/Report
1.	
2.	
3.	

Owner will make copies of these other Site-related documents available to any Bidder on request.

- B. Owner has not verified the contents of these other Site-related documents, and Bidder may not rely on the accuracy of any data or information in such documents. Bidder is responsible for any interpretation or conclusion Bidder draws from the other Site-related documents.
- C. The other Site-related documents are not part of the Contract Documents.
- D. Bidders are encouraged to review the other Site-related documents, but Bidders will not be held accountable for any data or information in such documents. The requirement to review and take responsibility for documentary Site information is limited to information in (1) the Contract Documents and (2) the Technical Data.
- E. No other Site-related documents are available.

5.04 *Site Visit and Testing by Bidders*

- A. Bidder shall conduct the required Site visit during normal working hours and conduct a thorough visual examination of the Site and adjacent sites. During the visit the Bidder must not disturb any ongoing operations at the Site.
- B. Site visit of the Project will be held immediately following the pre-bid conference; the date time, and location will be stated in the Advertisement for Bids [OR] Site visit(s) of the Project will be on DATE at TIME a.m./p.m. and TIME a.m./p.m. local time. Site visits will be limited to [#]-hour duration from the scheduled start time. There will be no other site visits. [OR] There will be no site visit for this Procurement.
- C. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
- D. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder general access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner’s authority regarding the Site.
- E. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- F. Bidder shall restore the property to the equivalent of its original condition upon completion of such explorations, investigations, tests, and studies which shall include but is not limited to filling of all holes and clean-up of Site. Bidder shall indemnify, defend, and hold Owner harmless from and against all claims, costs, losses, damages, and expenses, including reasonable attorney fees, arising from Bidder’s, its agent’s, employee’s, designee’s,

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representative's or contractor's activities upon the Site.

5.05 *Owner's Safety Program*

- A. Site visits and work at the Site and Owner's property will be governed by an Owner safety program. Requirements of Owner's safety program are defined in the General Conditions, Supplementary Conditions, and Technical Specification section on Special Conditions.

5.06 *Other Work at the Site*

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

5.07 *Additional Information*

- A. Provisions concerning possible changes in the Contract Documents due to differing or unforeseen conditions appear in Paragraph 5.04 of the General Conditions.
- B. Owner's Design and Construction Standards are available for review at <https://www.hrsd.com/standards>. Any variances of these standards not specifically shown in the Contract Documents must be approved by Owner prior to the submittal of the Bid.

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

6.01 *Bidder's Representations:* In submitting the Bid, Bidder represents the following:

- A. Bidder has provided their social security number or federal employer identification number in Owner's Online Oracle ERP system.
- B. Bidder has examined and carefully studied the Bidding Documents, any data, and reference items identified in the Bidding Documents, and issued Addenda, if any.
- C. Bidder accepts all of the terms and conditions of the Instructions to Bidders including without limitation those dealing with the Bid Bond.
- D. Bidder has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- E. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
- F. Bidder has carefully studied the reports, if any, of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings, if any, of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Bidding Documents, with respect to the Technical Data in such reports and drawings.
- G. Bidder has carefully studied the reports and drawings, if any, relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Bidding Documents, with respect to Technical Data in such reports and drawings.
- H. Bidder has considered the information known to Bidder itself; information commonly known to the 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, if any, identified in the Bidding Documents or otherwise made available to Bidder; 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, if selected as the Contractor; and (3) Bidder's (Contractor's) safety precautions and programs.

- I. Based on the information and observations referred to in the preceding Paragraph, Bidder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the preparation of its Bid for performance of the Work at the Bid price and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- J. Bidder is 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.
- K. Bidder has promptly submitted online discussion(s) through Owner's Online Oracle ERP system as a written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents and of discrepancies between Site conditions and the Bidding Documents and confirms that the written resolution by Owner is acceptable to Bidder.
- L. Bidder has determined that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- M. The submission of the Bid constitutes an incontrovertible representation by Bidder that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.
- N. Bidder is organized or authorized to transact business in the Commonwealth of Virginia in accordance with Title 13.1 and/or Title 50 of the Code of Virginia. Bidder shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so, required under Title 13.1 and/or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of this Agreement. If the Bidder fails to remain in compliance with the provisions of this Section, Owner reserves the right to cancel this Agreement.
- O. Bidder does not, and shall not during the performance of the Contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986, in accordance with §2.2-4311.1 of the Code of Virginia.

6.02 *Bidder's Certifications:* The Bidder certifies the following:

- A. The 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 and 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 competing for the award of the Construction Contract.

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- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Construction Contract. For the purposes of this Paragraph:
1. "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the Bidding process or in the Construction Contract execution.
  2. "Fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the Bidding process or the execution of the Construction 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 2 or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid or Contract prices at artificial, non-competitive levels.
  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 Construction Contract.
- E. Bidder and its affiliates have only submitted one Bid for any particular Work. Bidder further certifies that it does not share any key personnel with any other Bidder who is submitting a Bid for the same Work as Bidder. For the purposes of this Section:
1. "Key personnel" means any owner, president, vice president, manger, or superintendent of Bidder.

## **ARTICLE 7—INTERPRETATIONS AND ADDENDA**

### **7.01 Questions**

- A. Administrative questions shall be addressed to [CS name], Contract Specialist, via email to [email@hrsdc.com](mailto:email@hrsdc.com).
- B. Bidder shall submit all questions about the meaning or intent of the Bidding Documents through Owner's Online Oracle ERP system as an online discussion.

### **7.02 Addenda**

- A. Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.
- B. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda via Owner's Online Oracle ERP system and sent to all parties recorded as having received the Bidding Documents. Questions received less than 7 calendar days prior to the date for opening of Bids may not be answered.
- C. Only responses set forth in Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the Contract Documents unless set forth in Addenda that expressly modifies or supplements the Contract Documents.

## **ARTICLE 8—BID SECURITY**

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond issued by a surety meeting the

requirements of Paragraph 6.01 and 6.02 of the General Conditions. Such Bid bond will be issued on the form included in the Bidding Documents.

- 8.02 A scanned copy of the Bid security shall be included with the Bid. If the Bidder chooses to provide a Bid security using a certified check or bank money order, the original check or money order shall be received by the Owner by the date and time of the Bid opening. The certified check or money order shall be mailed to: HRSD, PO Box 5911, Virginia Beach, VA 23471 and shall list the Project name for which the security shall apply.
- 8.03 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract, furnished the required Contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract and furnish the required Contract security within 15 calendar days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited, in whole in the case of a penal sum bid bond, and to the extent of Owner's damages in the case of a damages-form bond. Such forfeiture will be Owner's exclusive remedy if Bidder defaults.
- 8.04 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of 7 calendar days after the Effective Date of the Contract or 61 calendar days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.

#### **ARTICLE 9—CONTRACT TIMES**

- 9.01 The number of calendar days within which, or the dates by which, the Work is to be substantially completed and completed and ready for final payment (the Contract Times) 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 for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or "or-equal" items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or "or-equal" item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.
- 11.02 All prices that Bidder sets forth in its Bid will be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of "or-equal" or substitution requests are made at Bidder's sole risk.

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

- 12.01 A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required to do so by the Bidding Documents or in the Specifications. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individuals or entities and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.

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- 12.02 Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.
- 12.03 The apparent Successful Bidder, and any other Bidder so requested, must submit to Owner a list of the Subcontractors, Suppliers, or other individuals or entities proposed for the Work within 48 hours after the Bid opening.
- 12.04 If requested by Owner, such list must be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, or other individual or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder will submit a substitute, Bidder's Bid price will not be increased by such substitution.
- 12.05 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, other individuals or entities. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, or other 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 subsequent revocation of such acceptance as provided in Paragraph 7.07 of the General Conditions.

#### **ARTICLE 13—PREPARATION OF BID**

- 13.01 Electronic Bids shall be submitted through Owner's Online Oracle ERP system by an authorized representative. The online submittal certifies that the Bidder is an agent or officer authorized to bind the company to the terms and conditions of the solicitation.
- A. All required fields shall be complete. A Bid price shall be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price listed therein.
- B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words "No Bid" or "Not Applicable."
- 13.02 A Bid by a corporation shall be submitted in the corporate name by a corporate officer or authorized agent. Owner may request evidence of authority to sign. The corporate address and state of incorporation shall be provided.
- 13.03 A Bid by a partnership shall be submitted in the partnership name by a partner. Owner may request evidence of authority to sign. The official address of the partnership shall be provided.
- 13.04 A Bid by a limited liability company shall be submitted in the name of the firm by a member or other authorized person. Owner may request evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be provided.
- 13.05 A Bid by an individual must show the Bidder's name and official address.
- 13.06 A Bid by a joint venture (JV) shall be submitted by an Authorized Representative of the JV. Owner may request evidence of authority to sign. The joint venturers shall provide details of their interest in the relationship and the official name and address of the JV, as an attachment to the Bid in Owner's Online Oracle ERP system.

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- A. The JV needs to be fully and properly established with a Federal Tax Identification Number prior to submittal of a Bid.
- B. Each individual member of the JV must be registered with the State Corporation Commission (SCC) in accordance with §2.2-4311.2 of the Code of Virginia.
- C. The Bid can be submitted in Owner's Online Oracle ERP system by an Authorized Representative from one of the joint venturers and the JV supplier registration in Owner's Online Oracle ERP system shall be required after Commission approval and prior to Contract award. If the JV supplier registration has already been approved in Owner's Online Oracle ERP system, the Bid shall be submitted under the JV.
- D. Owner, in its sole discretion, reserves the right to determine that the information provided regarding the status of the JV is acceptable and meets the intent stated above.

13.07 The Bidder shall acknowledge receipt of all Addenda.

13.08 The Bid shall contain evidence of Bidder's authority and qualification to do business in the Commonwealth of Virginia. The Virginia Registered Contractor License Number shall be provided.

13.09 A Bidder organized as a stock or non-stock corporation, limited liability company, business trust, general partnership, limited partnership, or registered as a limited liability partnership must be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 and/or Title 50 of the Code of Virginia or as otherwise required by law. A Bidder organized or authorized to transact business in the Commonwealth of Virginia pursuant to Title 13.1 and/or Title 50 of the Code of Virginia shall provide the State Corporation Commission (SCC) Identification Number.

13.10 Any Bidder that is not required to be authorized to transact business in the Commonwealth of Virginia as a foreign business entity under Title 13.1 and/or Title 50 of the Code of Virginia or as otherwise required by law shall include a statement describing why the Bidder is not required to be so authorized. Any Bidder described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement has been granted by Owner's General Manager.

#### **ARTICLE 14—BASIS OF BID**

14.01 *Lump Sum*

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

[or]

14.02 *Base Bid with Alternates* {Updated as needed for the Project}

- A. Bidders shall submit a Bid for the base Bid and include a separate price for each alternate described in the Bidding Documents and as provided for in the Alternate Bid Items Form, Attachment 1 provided in Article [#]. The price for each alternate will be the amount added to or deleted from the base Bid if Owner selects the alternate.
- B. In the comparison of Bids, Owner will review the Base Bid only and the alternate items will only be used if in the best interest of Owner.

[or]

14.03 *Unit Price*

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price

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section of the Bid Form.

- B. The “Bid Price” (sometimes referred to as the extended price) for each unit price Bid item will be the product of the “Estimated Quantity”, which Owner or its representative has set forth in the Bid Form, for the item and the corresponding “Bid Unit Price” offered by the Bidder. The total of all unit price Bid items will be the sum of these “Bid Prices”; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.

#### 14.04 Allowances

- A. For cash 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 cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 13.02.B of the General Conditions.

### **ARTICLE 15—SUBMITTAL OF BID**

- 15.01 A Bid shall be received no later than the date and time prescribed in the Advertisement or invitation to bid. Bids shall only be accepted through Owner’s Online Oracle ERP system. Failure to submit a response through the ERP website will be cause for rejection by Owner.
- 15.02 Bids received after the date and time prescribed for the opening of bids or not submitted in the designated manner will not be accepted. Owner shall not be responsible for late or lost responses due to an improper online submittal by Bidder.
- 15.03 If there are difficulties logging into or using Owner’s Online Oracle ERP system, please contact the ERP Help Desk at (757) 460-7318 or [erphelp@hrsdc.com](mailto:erphelp@hrsdc.com) for assistance.

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

- 16.01 A Bid may be withdrawn prior to the date and time of the opening of Bids through Owner’s Online Oracle ERP system.
- 16.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 15.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 16.03 A Bidder may withdraw its Bid due to error, in accordance with §2.2-4330 of the Code of Virginia and the Bid security will be returned if Bidder files a duly signed written notice with original working papers within 2 calendar days after Bids are opened and those documents demonstrate to the reasonable satisfaction of the Owner that there was a material and substantial mistake in the preparation of its Bid. Thereafter, that Bidder will be disqualified from further bidding or providing any material, labor, or subcontract work on the Work to be provided under the Contract Documents.

### **ARTICLE 17—OPENING OF BIDS**

- 17.01 Bids will be opened virtually at the date and time indicated in the Advertisement or invitation to bid. An abstract of the amounts of the base Bids and major alternates, if any, will be made available online to Bidders after the opening of Bids at Owner’s website at <https://www.hrsdc.com/bids-and-rfps>.

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

- 18.01 All Bids will remain subject to acceptance for 60 calendar days after the Bid opening or for such longer period of time that Bidder may agree to in writing upon request of Owner. Owner may, in

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its sole discretion, release any Bid and return the Bid security prior to the end of this period.

#### **ARTICLE 19—EVALUATION OF BIDS**

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner also reserves the right to waive all minor Bid informalities not involving price, time, or changes in the Work.
- 19.02 Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible.
- 19.03 If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, whether in the Bid itself or in a separate communication to Owner or Engineer, then Owner will reject the Bid as nonresponsive.
- 19.04 If Owner awards the contract for the Work, such award will be to the responsible Bidder submitting the lowest responsive Bid.
- 19.05 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.
- 19.06 *Evaluation of Bids*
- A. In evaluating Bids, Owner will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.
  - B. In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors, Suppliers, other individuals and entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, other individuals and entities must be submitted as provided in the Bidding Documents.
- 19.07 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, safety record, and financial ability of Bidders and any proposed Subcontractors, Suppliers, other individuals and entities.

#### **ARTICLE 20—NEGOTIATION WITH THE LOWEST RESPONSIBLE BIDDER**

- 20.01 Owner may negotiate with the lowest responsible Bidder to obtain a Contract within available funds if the lowest responsive Bid exceeds available funds. Such negotiation may be undertaken if approved in writing by Owner's General Manager and must be based on a project cost estimate prepared prior to issuance of the Advertisement for Bids.

#### **ARTICLE 21—BONDS AND INSURANCE**

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

## ARTICLE 22—AWARD OF CONTRACT AND SIGNING OF AGREEMENT

- 22.01 *Award of Contract:* The Director of Engineering shall submit the Agreement to the General Manager for approval, and the General Manager shall submit the Agreement to the Commission for approval of award.
- 22.02 *Signing of Agreement:* After the Commission approves the award of contract, the Owner will issue a Notice of Award to the Successful Bidder, it will be accompanied by the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 calendar days thereafter, Successful Bidder shall deliver any bonds and insurance documentation required to be delivered by the Contract Documents to Owner. Within 10 calendar days thereafter, Owner shall transmit the Agreement through Owner's Enterprise Project Management (Unifier) system. Successful Bidder's acknowledgment in Owner's Unifier system represents signature and acceptance of the terms and conditions of the Agreement.

## ARTICLE 23—[OPTIONAL-Projects for abating or preventing air or water pollution] TAXES

- 23.01 Bidders are advised that this is a pollution control Project and as such certain materials and equipment will be exempt from Virginia sales tax in accordance with Section 58.1-3660 of the Code of Virginia, as amended, upon a request by the Successful Bidder to the Owner's Contract Specialist. Specific items that are not tax exempt include temporary construction material and equipment, administrative facilities, consumable items, landscaping, restoration work, and City or County work included in the Project. Information to be submitted via email (a) Project Title, (b) Project Location, (c) Anticipated Project Completion Date, and (d) Description/List of the equipment and facilities to be purchased.

## ARTICLE 24—RETAINAGE

- 24.01 Provisions concerning retainage are set forth in the Agreement.

## ARTICLE 25— [OPTIONAL – USE IF HRSD SUPPLIES EQUIPMENT/MATERIALS] CONTRACTS TO BE ASSIGNED

- 25.01 Owner (Buyer) [has executed/will execute] a contract with [Name] (Seller) for the procurement of goods and special services for [Name]. The materials and equipment provided for in the procurement contract are to be furnished and delivered to the Site [or other location] for installation by Contractor. The said procurement contract will be assigned by Owner to Contractor as set forth in the Agreement. Contractor will accept the assignment and assume responsibility for the Seller, who will become a Subcontractor to Contractor. {Use P520 Agreement Form – get with Contract Specialist}
- 25.02 Bidders may examine the Contract Documents for the procurement of goods and special services for [Item] at [Location] – or – [as Other Exhibits to the Agreement – if using P520 Agreement Form].

## ARTICLE 26—[OPTIONAL] PARTNERING

- 26.01 Owner intends to participate in a partnering process with Contractor. The process is intended to help develop better and more effective communication and mutual understanding of common goals. The objectives of the process will be to achieve effective and efficient performance of the Work and completion of the Work within the Contract Price and Contract Times, all in accordance with the Contract Documents.
- 26.02 Participation in the partnering process will be voluntary. To initiate the process, within [number] calendar days after the Notice to Proceed the key personnel of Owner, Engineer, Contractor, and

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Contractor's major Subcontractors will be invited to attend a [number] day seminar and team building workshop to develop a partnering statement. The seminar and the workshop will be conducted by a neutral facilitator at a time and location agreed to by Owner and Contractor in the general vicinity of the Site.

- 26.03 The facilitator will be selected by Owner, subject to approval by Contractor. All facilitator-related and facilities costs will be shared equally by Owner and Contractor with no change in the Contract Price or Contract Time. Each party will pay all costs associated with the participation of its own personnel.
- 26.04 It is intended that the initial seminar and workshop sessions be followed by periodic [half/one] day evaluation sessions approximately every [number] calendar days as agreed to by Owner and Contractor.
- 26.05 These provisions express the intent and spirit of the partnering process, and nothing stated herein or in the partnering statement shall change in any way the rights, responsibilities, and obligations of the parties as set forth in the Contract Documents. The partnering statement will not be a part of the Contract Documents and will not modify any defense, claim, obligation, or right that otherwise exists.

#### **ARTICLE 27—[OPTIONAL] PROJECT FUNDING**

##### **27.01 [OPTIONAL] Virginia Clean Water Revolving Loan Fund (VCWRLF) Program Requirements**

- A. This Project is funded in part under the VCWRLF. Bidders must be familiar with and in compliance with the additional requirements associated with this funding source and must provide the required documentation.
- B. Bidders shall comply with the President's Executive Order No. 11246 (Prohibiting discrimination in employment regarding race, color, creed, sex or national origin), No. 12138 and No. 11625 (Regarding MBE/WBE utilization). Bidders shall also comply with the Civil Rights Act of 1964.
- C. Bidders must certify that they do not and will not maintain or provide for their employees any facilities that are segregated on basis of race, color, creed, sex or national origin.
- D. *Affirmative Steps:* Activities during preparation of proposals. Bidders shall take affirmative steps in compliance with the regulations, prior to submission of proposals, to encourage participation in Projects by MBE/WBE firms. Such efforts include:
1. Establish and maintain a current solicitation list of minority and female recruitment sources and assure MBE/WBE firms are solicited once they are identified.
  2. When feasible, segmenting total work requirements to permit maximum MBE/WBE participation and establish delivery schedules to encourage MBE/WBE participation.
  3. Assuring that MBE/WBE firms are solicited whenever they are potential sources of goods and services. This step may include:
    - a. Sending letters or making other personal contact with MBE/WBE firms, private agencies and state associations (e.g. – whose names appear on lists prepared by the United States Environmental Protection Agency (EPA) or the recipient and other MBE/WBE known to the Bidder). MBE/WBE firms should be contacted when other potential subcontractors are contacted, within reasonable time prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:

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- 1) Specific description of the work to be contracted.
  - 2) How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation.
  - 3) Date the quotation is due to the Bidder.
  - 4) Name, address, and phone number of the person in the Bidder's firm whom the prospective MBE/WBE subcontractor should contact for additional information.
- b. Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the United States Department of Commerce.
- E. Bidders must demonstrate compliance with MBE/WBE requirements to be deemed responsible. Successful Bidders shall provide documentation on MBE/WBE solicitation efforts as detailed in the VCWRLF – 2016 Contract Inserts and complete the "Bidder Compliance Statement/Certification Regarding Equal Employment Opportunity". Demonstration of compliance may include the following information; however, the recipient may specify other methods of demonstrating compliance:
1. Provide the names, addresses, and telephone numbers of MBE/WBE firms expected to perform work.
  2. Describe the type work to be performed by the MBE/WBE firms.
  3. Provide the aggregate dollar amount of work to be performed by MBE/WBE firms, showing aggregate to MBE's and aggregate to WBE's separately.
  4. Include description of contracts to MBE/WBE organizations, agencies, and associations which service MBE/WBE firms, including names of organizations, agencies, and associations and dates of contacts.
  5. Include description of contacts to MBE/WBE firms, including number of contacts, fields (e.g. – equipment or material supplier, excavators, transport services, electrical subcontractors, plumbers, etc.) and dates of contacts.
- F. Successful Bidder should take reasonable affirmative steps to subcontract with MBE/WBE firms whenever additional subcontracting opportunities arise during the performance of the contract.
- G. Successful Bidder shall provide a signed copy of Attachment #6 from the VCWRLF – 2016 Contract Inserts titled, "American Iron and Steel (AIS) Certification Statement".

27.02 **[OPTIONAL]** *Water Infrastructure Finance and Innovation Act (WIFIA) Program Requirements*

- A. This Project is being funded in part under the WIFIA program. Bidders must be familiar with and in compliance with the additional requirements associated with this funding source and must provide the required documentation.
- B. Bidders shall comply with the President's Executive Order No. 12549 (Debarment and suspension) and United States Code Title 31, Section 1352 (Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions). Successful Bidder shall complete and submit Appendix A and Appendix B in the WIFIA Contract Inserts.

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- C. Bidders shall comply with the following federal non-discrimination requirements:
1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
  2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
  3. The Age Discrimination Act of 1975, which prohibits age discrimination.
  4. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
  5. Title 40, Part 7 of the Code of Federal Regulations, as it relates to the foregoing.
  6. President’s Executive Order No. 11246, which prohibits discrimination in employment regarding race, color, creed, sex, or national origin.
- D. *Affirmative Steps:* Activities during preparation of proposals. Bidders shall take affirmative steps in compliance with the regulations, prior to submission of proposals, to encourage participation in Projects by MBE/WBE firms. Such efforts include:
1. The “Equal Opportunity Clause” and “Standard Federal Equal Employment Specifications” detailed in the WIFIA – Contract Inserts.
  2. The goals and timetables for MBE/WBE participation, expressed in percentage terms for the Contractor’s aggregated workforce for each trade on all construction work in the covered area, are as follows:

<b>Time-tables</b>	<b>Goals for minority participation for each trade<sup>1</sup></b>	<b>Goals for female participation in each trade<sup>2</sup></b>
End of Contract	[UPDATE USING FINAL INSERTS]	6.9%

3. The hours of MBE/WBE firm employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ MBE/WBE firms evenly on each of its projects.
4. Bidders must demonstrate compliance with MBE/WBE requirements to be deemed responsible. Successful Bidder shall provide documentation on MBE/WBE solicitation efforts as detailed in the WIFIA – Contract Inserts and complete the “Bidder Compliance Statement/Certification Regarding Equal Employment Opportunity”. The WIFIA program is to incorporate six (6) good faith efforts during contract and subcontract procurement and maintain document of efforts. Demonstration of compliance may include the following information; however, the recipient may specify other methods of demonstrating compliance:
  - a. Provide the names, addresses, telephone numbers, and employer identification of MBE/WBE firms expected to perform work.
  - b. Describe the work to be performed by the MBE/WBE firms.
  - c. Provide the estimated dollar amount of work to be performed by MBE/WBE

<sup>1</sup> Goals can be found at: [https://www.dol.gov/ofccp/TAGuides/TAC\\_FedContractors\\_JRF\\_QA\\_508c.pdf](https://www.dol.gov/ofccp/TAGuides/TAC_FedContractors_JRF_QA_508c.pdf)

<sup>2</sup> Nationwide goal for all covered areas

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firms.

- d. Provide the estimated starting and completion dates of the subcontract.
- e. Provide the geographical area in which the subcontract is to be performed.
- E. Successful Bidder shall comply with the American Iron and Steel (AIS) Requirements; complete and submit Appendix F in the WIFIA Contract Inserts.
- F. Successful Bidder shall comply with the Build America, Buy America Act (BABA); complete and submit Appendix H in the WIFIA Contract Inserts
- G. Successful Bidder shall comply with the Davis Bacon and Related Acts.
- H. Owner is preparing all documents for the WIFIA application including National Environmental Policy Act (NEPA) documentation.

#### **ARTICLE 28—ATTACHMENT**

28.01 [OPTIONAL] Attachment 1: Alternate Bid Items Form



**ATTACHMENT [#]:**  
**[PROJECT NAME] [CIP#]**  
**ALTERNATE BID ITEMS FORM**

**\*This document must be filled out and attached to the Bid response in the Owner's Online Oracle ERP system\***

Alternate Bid Items: The alternate items will only be used if in the best interest of Owner. [update, as needed to match the Measurement and Payment Section].

Item Number	Item Description	Quantity	Unit	Unit Price	Total Price
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
<b>TOTAL:</b>					<b>\$</b>

## QUESTIONNAIRE

The undersigned guarantees the accuracy of all statements and answers herein contained. Contractor shall provide answers in order on separate sheet except where fill one blank or yes/no checks suffice.

1. How many years has your firm been in business as a General Contractor?  
  
\_\_\_\_\_ years
  
2. List at least 3 projects similar in nature to this project that you have completed. Provide project information addressing the qualifications identified in Article 3 of the Instructions to Bidders. For each project include:
  - a. The original contract date and time.
  - b. The final contract time.
  - c. The original contract cost.
  - d. The final contract cost.
  - e. Name, address, phone number, and contact for the Consulting Engineer or Registered Architect and Owner Representative involved with the project.
  
3. List projects presently under construction by your firm, dollar value of the contract, and the percent of completion.
  
4. Have you ever performed work for a public body such as the Hampton Roads Sanitation District previously? If yes, list the public body and name of the project for the three most recent projects. (If all such entities are listed under 2, this question need not be completed.)  
  
\_\_\_\_\_Yes      \_\_\_\_\_No
  
5. Have you ever failed to complete work awarded to you? If yes, state where and explain why on separate sheet.  
  
\_\_\_\_\_Yes      \_\_\_\_\_No
  
6. Do you plan to use subcontractors for any part of this work? If yes, give details.  
  
\_\_\_\_\_Yes      \_\_\_\_\_No
  
7. What equipment do you own that is available for this work?
  
8. What equipment do you plan to rent or purchase for this work?
  
9. Give the name, address and telephone number of an individual who represents each of

the following and who the Owner or Engineer may contact to investigate your financial responsibility:

a. Surety Name \_\_\_\_\_

Contact Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Phone Number \_\_\_\_\_

b. Bank Name \_\_\_\_\_

Contact Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Phone Number \_\_\_\_\_

c. Material Supplier Name \_\_\_\_\_

Contact Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Phone Number \_\_\_\_\_

10. List all formal claims made, requests for equitable contract adjustments submitted, arbitrations, or legal actions taken by Contractor against any Owner within the last five years. Include Owner, project title, amounts of disputes, and final disposition with explanations, as appropriate.

11. List any projects on which liquidated damages were assessed within the past five years.

12. Has your firm or any of its officers, employees or agents ever been suspended or debarred from any Federal, State or local procurement? If yes, provide details.

\_\_\_\_ Yes    \_\_\_\_ No

13. List your firm's designated safety representative(s) and **attach an OSHA 300 form** (Log and Summary of Occupational Injuries and Illnesses), as appropriate, **covering the past 5 years.**

\_\_\_\_\_

14. Provide a copy of your most recent financial statement.
15. State the true, exact, correct and complete name of the partnership, corporation or trade name under which you do business, and the address of the place of business. (If a corporation, state the name of the President and Secretary. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.) It is absolutely necessary that this information be furnished.

\_\_\_\_\_

Correct Name of Bidder

- a. The business is a \_\_\_\_\_
- b. The address of the principal place of business is:  
\_\_\_\_\_  
\_\_\_\_\_
- c. The names of the corporate officers, partners, or individuals doing business under a trade name, are as follows:  
\_\_\_\_\_  
\_\_\_\_\_

16. **[OPTIONAL-Project Funding]** The Bidder has reviewed the Davis-Bacon wage determination provided.  
  
\_\_\_\_ Yes      \_\_\_\_ No

Please list, if any, classifications that are missing from the Davis-Bacon wage determination provided:  
\_\_\_\_\_  
\_\_\_\_\_

17. **[OPTIONAL-VCWRLF]** Provide documentation on Minority and Women’s Business Enterprises (MBE/WBE) solicitation efforts as detailed in Article 27 **[Verify Article Number]** of the Instructions To Bidders and the Virginia Clean Water Revolving Loan Fund (VCWRLF) 2016 – Contract Inserts and complete the attached “Bidder Compliance Statement/Certification Regarding Equal Employment Opportunity”.
  - a. Provide the names, addresses, and telephone numbers of MBE/WBE firms expected to perform work.
  - b. Describe the type of work to be performed by MBE/WBE firms.

- c. Provide the aggregate dollar amount of work to be performed by MBE/WBE firms, showing aggregate to MBE's and aggregate to WBE's separately.
  - d. Include description of contacts to MBE/WBE organizations, agencies, and associations which serve MBE/WBE firms, including names of organizations, agencies, and associations and dates of contacts.
  - e. Include descriptions of contacts MBE/WBE firms, including number of contacts, fields (e.g. – equipment or material supplier, excavators, transport services, electrical subcontractors, plumbers, etc.) and dates of contacts.
18. **[OPTIONAL-WIFIA]** Provide documentation on Minority and Women's Business Enterprises (MBE/WBE) solicitation efforts as detailed in Article 27 **[Verify Article Number]** of the Instructions To Bidders and the Water Infrastructure Finance and Innovation Act (WIFIA) – Final Contract Inserts and complete the attached "Bidder Compliance Statement/Certification Regarding Equal Employment Opportunity".
- a. Provide the names, addresses, telephone numbers, and employer identification of MBE/WBE firms expected to perform work.
  - b. Describe the work to be performed by the MBE/WBE firms.
  - c. Provide the estimated dollar amount of work to be performed by MBE/WBE firms.
  - d. Provide the estimated starting and complete dates of the subcontract.
  - e. Provide the geographical area in which the subcontract is to be performed.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_.

\_\_\_\_\_  
 \_\_\_\_\_  
 By \_\_\_\_\_

**[OPTIONAL-PROJECT FUNDING] BIDDER COMPLIANCE STATEMENT/  
CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

This statement relates to a proposed contract between \_\_\_\_\_ (contractor) and Public Body) or (subcontract between \_\_\_\_\_ (subcontractor) and \_\_\_\_\_ (contractor)) to be funded under a federally assisted project. Pursuant to Executive Order 11246 and its implementing regulations at 41 CFR 60-1.7(b)(1), as the undersigned bidder, I certify that:

1) Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.

\_\_\_\_ Yes      \_\_\_\_ No

2) Bidder has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR 60-2 (applies only to non-construction contractor).

\_\_\_\_ Yes      \_\_\_\_ No

3) Bidder has filed with the Joint Reporting Committee, the Director (Office of Federal Contract Compliance Programs, U.S. Department of Labor), and agency, or the Equal Employment Opportunity Commission, all reports due under the applicable filing requirements.

\_\_\_\_ Yes      \_\_\_\_ No

I understand that if I have failed to file any compliance reports which have been required of me, or have failed to develop and have on file at each establishment affirmative action programs pursuant to 41 CFR 60-2, when required, I am not eligible to have my bid or proposal considered, or to enter into the proposed contract.

I further understand that if awarded the proposed contract, and the contract for the FIRST time brings me under the filing requirements of the written affirmative action programs that I will, as applicable: (a) within 30 days file with the Public Body Standard Form 100 (EEO-1); and (b) within 120 days from the commencement of the contract develop and submit to the Director of OFCCP for approval a Written Affirmative Action Plan.

NAME AND ADDRESS OF BIDDER (Include ZIP Code):

NAME AND TITLE OF SIGNER (Please Type):

SIGNATURE:

DATE:

## BID BOND

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

AMOUNT: 5% of Bid amount \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_ hereinafter called the Principal, and \_\_\_\_\_ a corporation duly organized under the laws of the State of \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ in the State of \_\_\_\_\_ and authorized to do business in the Commonwealth of Virginia, as Surety, are held and firmly bound unto Hampton Roads Sanitation District, as Owner, hereinafter called the Obligee, in the sum of 5% of Bid amount for the payment for which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS BOND IS SUCH THAT:

WHEREAS, the Principal is herewith submitting his or its Bid for [PROJECT NAME] said Bid, by reference thereto, being hereby made a part hereof.

NOW, THEREFORE, the conditions of this obligation are as follows: This Bid Bond shall guarantee that the Principal will not withdraw the Bid during the period of 60 calendar days following the opening of Bids; that if the Bid is accepted, Principal will enter into a formal Agreement with the Owner in accordance with the Instructions to Bidders; that Principal will submit a properly executed and authorized Performance Bond and Payment Bond on the forms included in the Instructions to Bidders; and that in the event of the withdrawal of said Bid within said period, or failure to enter into said Agreement and give said Bonds within 15 calendar days after Principal has received notice of acceptance of the Bid, Principal and Surety shall be jointly and severally liable to the Owner for the difference between the amount specified in said Bid and such larger amount for which the Owner may contract with another party to perform the work covered by said Bid, up to the amount of the Bid guarantee. This amount represents the damage to the Owner on account of the default of the Bidder in any particular thereof. It being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the said amount of this obligation as herein stated. Provided, however, that in addition to the amount of this obligation as herein stated, the Surety shall be liable for all costs and attorney's fees incurred by the Obligee in enforcing the obligations hereunder.

The Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and its Bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and the Surety does hereby waive notice of such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year set forth below.

By signing your name electronically below, you are agreeing that your electronic signature is the legal equivalent of your physical signature on this form. A paper copy of this form is not required at this time. Owner reserves the right to ask for a paper copy of this form at a later date.

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

PRINCIPAL

By\_\_\_\_\_

SURETY

By\_\_\_\_\_   
Attorney-In-Fact

IMPORTANT: The Surety executing Bonds shall appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the Commonwealth of Virginia.



# **CONTRACT FORMS**

# AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT

**THIS AGREEMENT** is by and between Hampton Roads Sanitation District (HRSD) (Owner), and [name] (Contractor).

Terms used in this Agreement have the meanings stated herein and in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

## PROJECT INFORMATION

*Construction Contract:* [name] [Owner's identification number] (Contract)

*Authorized Representatives:* Owner and Contractor each hereby designates a specific individual authorized to act as representative with respect to the performance of responsibilities under this Agreement. Such an individual shall have authority to transmit instructions, receive formal notices, receive information, and render decisions relative to this Agreement on behalf of the respective party that the individual represents.

1. Owner's Authorized Representative:

[Name], [Title – Director of Design and Construction or Chief Engineer]

[Address]

(757) [Number]; [email]@hrsd.com

2. Contractor's Authorized Representative:

[Name], [Title]

[Address]

[Phone Number]; [Email Address]

## ARTICLE 1 – THE WORK

### 1.01 *General Description of Work*

- A. Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: [Add project information].

## ARTICLE 2 – ENGINEER

2.01 The Owner has retained [Name] (Engineer) to act as Owner's representative, assume all duties and responsibilities of Engineer, 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.

2.02 The part of the Project that pertains to the Work has been designed by [Name].

## ARTICLE 3 – CONTRACT TIMES

### 3.01 *Time is of the Essence*

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

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3.02 *Contract Times* [Dates]

- A. The Work will be substantially complete on or before [date], and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before [date].

[or]

3.02 *Contract Times* [Days]

- A. The Work will be substantially complete within [number] calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment, in accordance with Paragraph 15.06 of the General Conditions, within [number] calendar days after the date when the Contract Times commence to run.

3.03 [OPTIONAL] *Milestones*

- A. Parts of the Work must be substantially completed on or before the following Milestone[s]:
1. Milestone 1 [event & date/ calendar days].
  2. Milestone 2 [event & date/calendar days].
  3. Milestone 3 [event & date/calendar days].

3.04 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 3.01 above, and that Owner will suffer financial and other losses if the Work is not completed and Milestones (if applicable) not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a lawsuit 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):
1. *Substantial Completion*: Contractor shall pay Owner \$[number] for each calendar day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 3.02 above for Substantial Completion, until the Work is substantially complete.
  2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$[number] for each calendar day that expires after such time until the Work is completed and ready for final payment.
  3. [OPTIONAL] *Milestones*: Contractor shall pay Owner \$[amount] for each calendar day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved.
  4. Liquidated damages for failing to timely attain Substantial Completion, final completion, and Milestones (if applicable) are not additive, and will not be imposed concurrently. Liquidated damages for failing to attain Substantial Completion shall take precedence.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is

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precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

- C. **[OPTIONAL] Bonus:** Contractor and Owner further recognize that the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Contractor agree that as a bonus for early completion, Owner shall pay Contractor \$[amount] for each calendar day prior to the time specified above in Paragraph 3.02 for Substantial Completion [as set forth in this Agreement as of the Effective Date] or [as duly adjusted pursuant to the Contract] that the Work is substantially complete. The maximum value of the bonus shall be limited to \$[amount].

**3.05 Consequential or Special Damages**

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor’s failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified above in Paragraph 3.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete. The total amount for Consequential Damages shall not exceed five percent (5%) of the Contract Price and all approved Contract Price modifications.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified above in Paragraph 3.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The Consequential Damages imposed in this Paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

**ARTICLE 4 – CONTRACT PRICE**

4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

- A. For all Work other than Unit Price Work, a lump sum of: \$[amount] ([words] dollars).  
All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.
- B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
				\$	\$
				\$	\$
				\$	\$

**PROJECT NAME**

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
				\$	\$
				\$	\$
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment): \$[amount] ([words] dollars).

## ARTICLE 5 – PAYMENT PROCEDURES

### 5.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Owner and Engineer will process Applications for Payment as provided in the General Conditions.
- B. [OPTIONAL] Contractor shall submit a monthly progress report with each Applications for Payment per the Water Infrastructure Finance and Innovation Act (WIFIA) Program Requirements.

### 5.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment monthly during performance of the Work as provided in Paragraph 5.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner, have been approved by the Engineer and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.
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 Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
    - a. 95 percent of Work completed (with the balance being retainage); and
    - b. 95 percent of cost of materials and equipment not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to Owner as provided in Paragraph 15.01.B of the General Conditions (with the balance being retainage).
- B. Upon Substantial Completion, the retainage shall be further reduced below 5 percent to that amount necessary to assure completion as determined by the Owner. The determination of any such reduction shall be at the sole discretion of the Owner.

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### 5.03 Diversity Procurement

- A. The Contractor, Subcontractors, and Suppliers are encouraged to provide the participation of small, women-owned, and minority-owned (SWaM) businesses, service-disabled veteran-owned businesses (SDVOB), or disadvantaged business enterprises (DBE) in this Agreement. With each monthly Application for Payment, the Contractor shall document the following:
1. if the Contractor is designated by the Commonwealth of Virginia as SWaM, SDVOB, and/or DBE, the designation type and the dollar value of Work completed by the Contractor,
  2. dollar value of Work completed by Subcontractors and/or Suppliers designated by the Commonwealth of Virginia as small businesses,
  3. dollar value of Work completed by Subcontractors and/or Suppliers designated by the Commonwealth of Virginia as women-owned businesses,
  4. dollar value of Work completed by Subcontractors and/or Suppliers designated by the Commonwealth of Virginia as minority-owned businesses,
  5. dollar value of Work completed by Subcontractors and/or Suppliers designated by the Commonwealth of Virginia as SDVOB, and
  6. dollar value of Work completed by Subcontractors and/or Suppliers designated by the Commonwealth of Virginia as DBE.
- B. [OPTIONAL] Virginia Clean Water Revolving Loan Fund (VCWRLF) Program Requirements
1. Contractor shall demonstrate compliance with minority business and women business enterprise (MBE/WBE) requirements and take reasonable affirmative steps to subcontract with MBE/WBE firms whenever additional subcontracting opportunities arise during the performance of the Agreement.
  2. Contractor shall submit Part I and Part II – MBE/WBE Utilization Reporting (Attachment #3 of the VCWRLF 2016 Contract Inserts) quarterly to the Department of Environmental Quality as directed by the Owner.
- C. [OPTIONAL] WIFIA Program Requirements
1. Contractor's compliance with Executive Order 11246 (Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity) and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-40.3(a), and its efforts to meet the goals.

### 5.04 Subcontractor or Supplier Payments

- A. In accordance with §2.2-4354 of the Code of Virginia:
1. Contractor is liable for the entire amount owed to any Subcontractor or Supplier with which it contracts. Contractor shall not be liable for amounts otherwise reducible due to the Subcontractor's or Supplier's noncompliance with the terms of the contract. In the event that the Contractor withholds all or a part of the amount promised to the Subcontractor or Supplier under the contract, the Contractor shall notify the Owner and Subcontractor or Supplier in writing of their intention to withhold all or a part of the Subcontractor's or Supplier's payment with the reason for nonpayment. Payment

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by the Subcontractor or Supplier contracting with the Contractor shall not be a condition precedent to payment to any lower-tier Subcontractor or Supplier, regardless of the Contractor receiving payment for amounts owed to the Contractor. Any provision in a contract contrary to this Section 5.04 shall be unenforceable.

2. Within 7 calendar days of each payment by Owner to Contractor under this Agreement, Contractor shall either:
  - a. pay the Subcontractor or Supplier for the proportionate share of the total payment received from the Owner attributable to the Work performed by the Subcontractor or Supplier; or
  - b. notify the Owner and Subcontractor or Supplier in writing of the intention to withhold all or part of the Subcontractor's or Supplier's payment with the reason for nonpayment.
3. Contractor shall pay interest to its Subcontractors or Suppliers on all amounts owed by the Contractor that remain unpaid after 7 calendar days following receipt by the Contractor of payment from Owner for Work performed by the Subcontractor or Supplier, except for amounts withheld as allowed in this Paragraph 2.
4. Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of 1 percent per month.
  - a. Contractor shall include in each of its subcontracts a provision requiring each Subcontractor or Supplier to include or otherwise be subject to the same payment and interest requirements set forth in this Paragraph.
  - b. A subcontract modification shall not be made for the purpose of providing reimbursement for the interest charges. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

5.05 **[OPTIONAL]** *Davis-Bacon Act Wage Determination*

- A. Contractor shall submit the Davis-Bacon Payroll Certification (WH-347) (Attachment #5 of the VCWLRP 2016 Contract Inserts and Appendix F of the WIFIA Contract Inserts) weekly for the United States Department of Labor as directed by the Owner.

5.06 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by the Engineer as provided in Paragraph 15.06 of the General Conditions.

5.07 *Consent of Surety*

- A. Owner may withhold final payment or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return or release.

**ARTICLE 6 – [OPTIONAL-PROJECT FUNDING] BIPARTISIAN INFRASTRUCTURE REQUIREMENTS**

6.01 **[OPTIONAL]** Contractor shall comply with all the American Iron and Steel (AIS) federal requirements and submittals shall be submitted as directed by the Owner.

6.02 **[OPTIONAL]** Contractor shall comply with all the Build America, Buy America (BABA) federal requirements and submittals shall be submitted as directed by the Owner.

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## ARTICLE 7 – REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

### 7.01 Contractor's Representations

- A. Contractor makes the following representations for Owner's reliance:
1. Contractor has provided their social security number or federal employer identification number in Owner's Online Oracle Enterprise Resource Planning (ERP) system.
  2. Contractor has examined and carefully studied the Contract Documents, any data, and reference items identified in the Contract Documents.
  3. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  4. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  5. Contractor has carefully studied the reports, if any, of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings, if any, of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Contract Documents, with respect to the Technical Data in such reports and drawings.
  6. Contractor has carefully studied the reports and drawings, if any, relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Contract Documents, with respect to Technical Data in such reports and drawings.
  7. Contractor has considered the information known to Contractor itself; 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, if any, identified in the Contract Documents or otherwise made available to Contractor, with respect to the effect of such information, observations, and documents on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
  8. Based on the information and observations referred to in the preceding Paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
  9. 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.
  10. Contractor has submitted online discussion(s) through Owner's Online Oracle ERP system as written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and of discrepancies between Site conditions and the Contract Documents and confirms that the written resolution by Owner is acceptable to Contractor.

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11. Contractor has determined that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
12. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
13. Contractor is organized or authorized to transact business in the Commonwealth of Virginia in accordance with Title 13.1 and/or Title 50 of the Code of Virginia. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so, required under Title 13.1 and/or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of this Agreement. If the Contractor fails to remain in compliance with the provisions of this section, Owner reserves the right to cancel this Agreement.
14. Contractor does not, and shall not during the performance of the Contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986, in accordance with §2.2-4311.1 of the Code of Virginia.

#### 7.02 *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 Construction Contract. For the purposes of this Paragraph:
  1. "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the Bidding process or in the Construction Contract execution.
  2. "Fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the Bidding process or the execution of the Construction 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 2 or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid or Contract prices at artificial, non-competitive levels.
  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 Construction Contract.

#### 7.03 *Anti-Discrimination Requirements*

- A. For all contracts over \$10,000 the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or other basis prohibited by state law relating to discrimination in employment. During the performance of this Agreement, the Contractor shall:
  1. post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause,
  2. in all solicitations or advertisements for employees placed by or on behalf of the

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Contractor, will state that such Contractor is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section, and

3. include the provisions of the foregoing clauses in every construction subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Subcontractor or Supplier, all in accordance with §2.2-4311 of the Code of Virginia.
- B. Further, in accordance with §2.2-4343.1 of the Code of Virginia, the Contractor shall not discriminate against a faith-based organization on the basis of the organization's religious character or impose conditions that restrict the religious character of the faith-based organization, except in accordance with §2.2-4343.1.F of the Code of Virginia, that no funds shall be expended on contracts for religious worship, instruction, or proselytizing, or impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.
- C. In accordance with the Virginia Human Rights Act §2.2-3900 of the Code of Virginia, the Contractor shall safeguard all individuals within the Commonwealth from unlawful discrimination in employment because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, disability, or status as a veteran; preserve the public safety, health, and general welfare; further the interests, rights, and privileges of individuals within the Commonwealth; and protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.

#### 7.04 *Drug Free Workplace Requirements*

- A. For all contracts over \$10,000 the Contractor shall maintain a drug-free workplace. During the performance of this Agreement, the Contractor shall:
  1. provide a drug-free workplace for the Contractor's employees,
  2. post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition,
  3. state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace, and
  4. include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Subcontractor or Supplier, all in accordance with §2.2-4312 of the Code of Virginia.

## **ARTICLE 8 – CONTRACT DOCUMENTS**

### 8.01 *Contents*

- A. The Contract Documents consist of the following:
  1. This Agreement (inclusive).
  2. [OPTIONAL] VCWRLF 2016 Contract Inserts (inclusive; not attached but incorporated by reference).

---

#### PROJECT NAME

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3. [OPTIONAL] WIFIA Contract Inserts (inclusive; not attached but incorporated by reference).
  4. General Conditions (inclusive; not attached but incorporated by reference).
  5. Supplementary Conditions (inclusive; not attached but incorporated by reference).
  6. Technical Specifications including Appendices, if any, (inclusive; not attached but incorporated by reference).
  7. Drawings (inclusive; not attached but incorporated by reference) with each sheet bearing the following general title: [tile of Drawings]. [OR] Drawings listed on the attached sheet index.
  8. Addenda (numbers 1 to [#], inclusive; not attached but incorporated by reference).
  9. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid submitted in Owner's Online Oracle ERP system (Solicitation [#]: Response [#]; not attached but incorporated by reference).
    - b. [OPTIONAL:P-520 Agreement] Procurement Documents for the [Update Project Name].
    - c. [List other exhibits, if any].
  10. The following which may be delivered or issued on or after the Effective Date of this Agreement and are not attached hereto:
    - a. Notice to Proceed.
    - b. Performance Bond (together with power of attorney).
    - c. Payment Bond (together with power of attorney).
    - d. Insurance Certificates.
    - e. [OPTIONAL] Escrow Agreement (if applicable).
    - f. Work Change Directives (if applicable).
    - g. Change Orders (if applicable).
- B. The Contract Documents listed in Paragraph 7.01.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 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## ARTICLE 9 – MISCELLANEOUS

9.01 Assignment of Agreement: Unless expressly agreed to elsewhere in the Agreement, no assignment by a party hereto of any rights under or interests in the Agreement will be binding on the other party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an

assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.

- 9.02 Successors and Assigns: Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, and its successors, assigns, and legal representatives, in respect to all covenants, agreements, and obligations contained in the Agreement.
- 9.03 Severability: Any provision or part of the Agreement held to be void or unenforceable under any applicable 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 Agreement 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.
- 9.04 Permission to Use HRSD Name and Social Media Release: The Contractor or any of its employees or agents shall not use HRSD's name, logo, proprietary information, or site photographs in any format for any personal or professional marketing or public relations material or social media use without prior review and approval from HRSD. These materials include, but are not limited to, advertisements, news releases, published articles, customer lists, social media posts, advertorials or any other promotional purposes. HRSD's Director of Communications shall be provided with any material to be shared with the public at least 7 business calendar days prior to the planned release of the information.

This Agreement will be effective on [date] (which is the Effective Date of the Construction Contract).

The Agreement and all subsequent changes to the Agreement will be approved and executed using Owner's Enterprise Project Management (Unifier) system. Physical signatures (on the Agreement and future Change Orders) will not be required if acknowledged by Contractor through the online system.

## PERFORMANCE BOND

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

AMOUNT: \$«Contract\_Value»

KNOW ALL PERSONS BY THESE PRESENTS, that «Contractor» of «Address\_Line\_1», «Address\_Line\_2», hereinafter called the Contractor, and «Surety» a corporation duly organized and existing under and by virtue of the laws of the State of «Surety\_State», hereinafter called the Surety, and authorized to transact business within the Commonwealth of Virginia as Surety, are held and firmly bound unto the Hampton Roads Sanitation District (HRSD) as Owner, in the sum of «Value\_words» dollars (\$«Contract\_Value»), lawful money of the United States of America, for payment of which, well and truly be made to the Owner, the Contractor and the Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the Contractor has executed and entered into a certain Agreement, hereto attached, with the Owner, dated «Contract\_Date» for [PROJECT NAME].

NOW, THEREFORE, if the Contractor, and its successors and assigns, shall at all times duly, promptly, and faithfully perform the Work and any alteration in or addition to the obligations of the Contractor arising thereunder, including the matter of infringement, if any, of patents or other proprietary rights, and shall assure all guarantees against defective workmanship and materials, including the guarantee period following final completion by the Contractor and final acceptance by the Owner and comply with all the covenants therein contained in the Specifications, Drawings, and other Contract Documents required to be performed by the Contractor, in the manner and within the times provided in the Agreement, and shall fully indemnify and save harmless the Owner from all costs and damage which it may suffer by reason or failure to do so, and shall fully reimburse and repay it all outlay and expenses which it may incur in making good any default, and reasonable counsel fees incurred in the prosecution of or defense of any action arising out of or in connection with any such default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that the Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to the Work to be performed thereunder, or payment thereunder before the time required therein, or waiver of any provision thereof, or assignment, subletting or transfer thereof or any part thereof, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents or any such payment, waiver, assignment, subcontractor or transfer.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Whenever Contractor shall be declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Owner shall have the right, at its option, to require the Surety to promptly proceed to remedy the default within 30 calendar days of notice by proceeding or procuring others to proceed with completing the Agreement with its terms and conditions; and all reserves, deferred payments, and other funds provided by the Agreement to be paid to Contractor shall be paid to Surety at the same times and under the same conditions as by the terms of that Agreement such fund would have been paid to Contractor had the Agreement been performed by Contractor; and Surety shall be entitled to such funds in preference to any assignee of Principal of any adverse claimant. Notwithstanding the above, the Owner shall have the right, with the approval of the Surety which shall

not be unreasonably withheld, to take over and assume completion of the Agreement and be promptly paid in cash by the Surety for the cost of such completion less the balance of the Contract price.

IN WITNESS WHEREOF, all above parties bounded together have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

By signing your name electronically below, you are agreeing that your electronic signature is the legal equivalent of your physical signature on this form. A paper copy of this form is not required at this time. Owner reserves the right to ask for a paper copy of this form at a later date.

«CONTRACTOR»

\_\_\_\_\_

By: \_\_\_\_\_(Seal)

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

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

\_\_\_\_\_

Attest

«SURETY»

\_\_\_\_\_

By: \_\_\_\_\_(Seal)

\_\_\_\_\_

Attest

NOTE: Date of Bond shall not be prior to date of Agreement. If Contractor is a partnership, all partners shall execute the Bond.

IMPORTANT: The Surety named on this Bond shall be one who is licensed to conduct business in the Commonwealth of Virginia, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent shall be accompanied by a certified copy of the authority to act for the Surety at the time of the signing of this Bond.

## PAYMENT BOND

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

AMOUNT: \$«Contract\_Value»

KNOW ALL PERSONS BY THESE PRESENTS, that «Contractor» of «Address\_Line\_1», «Address\_Line\_2», hereinafter called the Contractor and «Surety» a corporation duly organized and existing under and by virtue of the laws of the State of «Surety\_State», hereinafter called the Surety, and authorized to transact business within the Commonwealth of Virginia as the Surety, are held and firmly bound unto the Hampton Roads Sanitation District (HRSD) as Owner, in the sum of «Value\_words» dollars (\$«Contract\_Value»), lawful money of the United States of America, for payment of which, well and truly be made to the Owner, the Contractor and the Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the Contractor has executed and entered into a certain Agreement, hereto attached, with the Owner, dated «Contract\_Date» for [PROJECT NAME].

NOW, THEREFORE, if the Contractor shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in the Agreement, and any authorized extension or modification thereof, including, but not limited to, all amounts due for materials, lubricants, oil, gasoline, repairs on machinery, equipment, and tools consumed, used or rented in connection with the construction of the Work, and all insurance premiums on the Work, and for all labor performed in the Work, whether by Subcontractor or otherwise, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that the Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to Work to be performed thereunder, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, all above parties bounded together have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

By signing your name electronically below, you are agreeing that your electronic signature is the legal equivalent of your physical signature on this form. A paper copy of this form is not required at this time. Owner reserves the right to ask for a paper copy of this form at a later date.

«CONTRACTOR»

\_\_\_\_\_

By: \_\_\_\_\_(Seal)

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

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

\_\_\_\_\_

Attest

«SURETY»

\_\_\_\_\_

By: \_\_\_\_\_(Seal)

\_\_\_\_\_

Attest

NOTE: Date of Bond shall not be prior to the date of Agreement. If Contractor is a partnership, all partners shall execute the Bond.

IMPORTANT: The Surety named on this Bond shall be one who is licensed to conduct business in the Commonwealth of Virginia, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent shall be accompanied by a certified copy of the authority to act for the Surety at the time of the signing of this Bond.



## ESCROW AGREEMENT

THIS ESCROW AGREEMENT, made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by, between and among the Hampton Roads Sanitation District (HRSD) (Owner) and «Contractor» (Contractor), and \_\_\_\_\_ (Bank), a trust company, bank, or savings and loan institution with its principal office located in the Commonwealth and «Surety» (Surety), provides:

- A. The Owner and the Contractor have entered into an Agreement dated «Contract\_Date», with respect to a Project titled [Project Name] (the Agreement). This Escrow Agreement is pursuant to, but in no way amends or modifies the Agreement. Payments made hereunder or the release of funds from escrow shall not be deemed approval or acceptance of performance by the Contractor.
- B. In order to assure full and satisfactory performance by the Contractor of its obligations under the Agreement, the Owner is entitled to retain certain amounts otherwise due the Contractor, known as retainage. The Contractor has, with the approval of the Owner, elected to have such retainage held in escrow by the Bank. This document sets forth the terms of the escrow. The Bank shall not be deemed a party to, bound by, or required to inquire into the terms of the Agreement or any other instrument or agreement between the Owner and the Contractor.
- C. The Owner shall from time to time pursuant to its Agreement pay to the Bank amounts retained by it under the Agreement. Except as to amounts actually withdrawn from escrow by the Owner, the Contractor shall look solely to the Bank for the payment of funds retained under the Agreement and paid by the Owner to the Bank.

The risk of loss by diminution of the principal of any funds invested under the terms of this Escrow Agreement shall be solely upon the Contractor.

- D. Funds and securities held by the Bank pursuant to this Escrow Agreement shall not be subject to levy, garnishment, attachment, lien or other process whatsoever. The Contractor agrees not to assign, pledge, discount, sell or otherwise transfer or dispose of its interest in the escrow account or any part thereof, except to the Surety.
- E. Upon receipt of checks or warrants drawn by the Owner and made payable to it as escrow agent, the Bank shall promptly notify the Contractor, negotiate the same and deposit or invest and reinvest the proceeds in approved securities in accordance with the written instructions of the Contractor. In no event shall the Bank invest the escrow funds in any security not approved.
- F. The following securities, and none other, are approved securities for all purposes of this Escrow Agreement:
  - 1. United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates of Indebtedness or United States Treasury Bills;
  - 2. Bonds, notes and other evidences of indebtedness unconditionally guaranteed as to the payment of principal and interest by the United States;
  - 3. Bonds or notes of the Commonwealth of Virginia;
  - 4. Bonds of any political subdivision of the Commonwealth of Virginia, if such bonds carried, at the time of purchase by the Bank or deposit by the Contractor, a Standard and Poor's or

Moody's Investors Service rating of at least "A"; and,

5. Certificates of deposit or other financial accounts issued or held by commercial banks located within the Commonwealth, including, but not limited to, those insured by the Bank and its affiliates.
6. Any bonds, notes, or other evidences of indebtedness listed in Paragraphs 1 through 3 may be purchased pursuant to a repurchase agreement with a bank, within or without the Commonwealth of Virginia having a combined capital, surplus and undivided profit of not less than \$25,000,000, provided the obligation of the Bank to repurchase is within the time limitations established for investments as set forth herein. The repurchase agreement shall be considered a purchase of such securities even if title, and/or possession of such securities is not transferred to the Escrow Agent, so long as the repurchase obligation of the bank is collateralized by the securities themselves, and the securities have on the date of the repurchase agreement a fair market value equal to at least 100% of the amount of the repurchase obligation of the Bank and the securities are held by a third party, and segregated from other securities owned by the Bank.

No security is approved hereunder which matures more than five years after the date of its purchase by the Bank or deposit by the Contractor.

- G. The Contractor may from time to time withdraw the whole or any portion of the escrowed funds by depositing with the Bank securities approved, in writing, by the Owner in an amount equal to, or in excess of, the amount so withdrawn. Any securities so deposited or withdrawn shall be valued at such time of deposit or withdrawal at the lower par or market value, the latter as determined by the Bank. Any securities so deposited shall thereupon become a part of the escrowed fund.

Upon receipt of a direction signed by the HRSD General Manager, Director of Finance or Chief of Accounting & Finance, the Bank shall pay the principal of the fund, or any specified amount thereof, to the Owner. Such payment shall be made as soon as is practicable after receipt of the direction.

Upon receipt of a direction signed by either the HRSD General Manager, Director of Finance or Chief of Accounting & Finance on behalf of the Owner, the Bank shall pay and deliver the principal of the fund, or any specified portion thereof, to the Contractor, in cash or in kind, as may be specified by the Contractor. Such payment and delivery shall be made as soon as is practicable after receipt of the direction.

- H. For its services hereunder the Bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or as may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Escrow Agreement shall be paid from the income earned upon the escrow fund and, if such income is not sufficient to pay the same, by the Contractor.

Under no circumstances shall the Owner be responsible to the Bank for any fee or costs of administering this Escrow Agreement, account, or escrow fund.

- I. The net income earned and received upon the principal of the escrow fund shall be paid over to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank's fee or any other costs of administration such income shall be deemed a part of the

principal of the fund. All income earned shall be reported by the Bank to the Internal Revenue Service and other taxing authorities on the Contractor's Tax Identification Number, except for interest withdrawn by the Owner pursuant to Paragraph D.

- J. The Surety undertakes no obligation hereby but joins in the Escrow Agreement for the sole purpose of acknowledging that its obligations as surety for the Contractor's performance of the Agreement are not affected hereby.

WITNESS the following signatures, all as of the day and year first above written.

By signing your name electronically below, you are agreeing that your electronic signature is the legal equivalent of your physical signature on this form. A paper copy of this form is not required at this time. Owner reserves the right to ask for a paper copy of this form at a later date.

HAMPTON ROADS SANITATION DISTRICT

By \_\_\_\_\_

Director of Finance or Chief of Accounting & Finance

«Contractor»

\_\_\_\_\_

Contractor's Tax Identification Number or  
Social Security Number

By \_\_\_\_\_

Officer, Partner or Owner

BANK:

\_\_\_\_\_

Name of Bank

---

Mailing Address to which Payments are to be Mailed

---

Account Number

By \_\_\_\_\_

President or Vice President

«Surety»

By \_\_\_\_\_

Attorney-in-Fact

Please have the Escrow Agreement executed and submitted back to the Owner within 15 calendar days from the Notice of Award. If the Escrow Agreement form is not submitted with the 15-calendar day period, the Contractor shall forfeit their rights to the use of the Escrow account procedure per the Code of Virginia §2.2-4334.

Employer Identification Number: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Mailing Address: 1434 Air Rail Avenue, Virginia Beach, Virginia 23455

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

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

1. HRSD should be identified as the "owner" of the account with two signers - one from HRSD and one from the Contractor. Both signatures are required to remove funds from the account.
2. Please provide Terms and Conditions from the Bank concerning the Escrow account.

# **CONDITIONS OF THE CONTRACT**

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

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

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

by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

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

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

contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

46. *Technical Data*

- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
- b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
- c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

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

50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 *Terminology*

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,”

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“suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - 1. does not conform to the Contract Documents;
  - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
  - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
  - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.



## ARTICLE 2—PRELIMINARY MATTERS

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

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

### 2.02 *Copies of Documents*

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

### 2.03 *Before Starting Construction*

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

### 2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

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- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### 2.05 *Acceptance of Schedules*

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

#### 2.06 *Electronic Transmittals*

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

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

#### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.

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- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
  - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
  - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

### 3.02 *Reference Standards*

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

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

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

- 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
- 2. *Contractor's Review of Contract Documents:* If, before or during the performance of the

Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

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

**B. *Resolving Discrepancies***

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

**3.04 *Requirements of the Contract Documents***

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

**3.05 *Reuse of Documents***

- A. Contractor and its Subcontractors and Suppliers shall not:

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1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
  2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

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

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

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

##### **4.02 *Starting the Work***

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

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

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

##### **4.04 *Progress Schedule***

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or

disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  - 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
  - 1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  - 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  - 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
  - 1. The circumstances that form the basis for the requested adjustment;
  - 2. The date upon which each cause of delay, disruption, or interference began to affect the

- progress of the Work;
3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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

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

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

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

- A. *Limitation on Use of Site and Other Areas*
  1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or

conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
  1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
  2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
  3. Technical Data contained in such reports and drawings.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such



reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

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

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

- C. *Owner's Statement to Contractor Regarding Site Condition*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
    - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
  2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
    - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
    - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
  3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities.

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

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  2. complying with applicable state and local utility damage prevention Laws and Regulations;
  3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
  2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
  3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
  4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating

whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

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

5.06 *Hazardous Environmental Conditions at Site*

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

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

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

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

## **ARTICLE 6—BONDS AND INSURANCE**

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

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or

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Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.

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

#### 6.02 *Insurance—General Provisions*

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

Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.

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- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

#### 6.03 Contractor's Insurance

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

and consultants of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

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

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

#### 6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary

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Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

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

#### 6.06 *Receipt and Application of Property Insurance Proceeds*

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

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

#### 7.01 *Contractor's Means and Methods of Construction*

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

#### 7.02 *Supervision and Superintendence*

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

#### 7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any

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other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.

- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

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

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

#### 7.05 *"Or Equals"*

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

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

#### 7.06 *Substitutes*

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

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

appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

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

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- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

#### 7.08 *Patent Fees and Royalties*

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

#### 7.09 *Permits*

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

#### 7.10 *Taxes*

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

#### 7.11 *Laws and Regulations*

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

#### 7.12 *Record Documents*

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

#### 7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the

necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;
  2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.14 *Hazard Communication Programs*

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

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with Laws or Regulations.

#### 7.15 *Emergencies*

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

#### 7.16 *Submittals*

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

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

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

##### 1. *Shop Drawings*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities,

dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

2. *Samples*

- a. Contractor shall submit the number of Samples required in the Specifications.
  - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

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

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

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

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided,

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however, that after the end of the correction period under Paragraph 15.08:

1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
1. Observations by Engineer;
  2. Recommendation by Engineer or payment by Owner of any progress or final payment;
  3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. Use or occupancy of the Work or any part thereof by Owner;
  5. Any review and approval of a Shop Drawing or Sample submittal;
  6. The issuance of a notice of acceptability by Engineer;
  7. The end of the correction period established in Paragraph 15.08;
  8. Any inspection, test, or approval by others; or
  9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use

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resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.

- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

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

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



- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

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

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

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

### **8.02 *Coordination***

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for

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- coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

### 8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
- 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
  - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve

the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

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

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

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

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

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

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

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

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

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

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

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

### **9.06 *Insurance***

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

### **9.07 *Change Orders***

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

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

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

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

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

be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

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

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

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

10.03 *Resident Project Representative*

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

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

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

#### 10.04 *Engineer's Authority*

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

#### 10.05 *Determinations for Unit Price Work*

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

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

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

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

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

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

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

#### 10.08 *Compliance with Safety Program*

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

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

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

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

#### 11.02 *Change Orders*

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

### 11.03 *Work Change Directives*

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

### 11.04 *Field Orders*

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

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

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

### 11.06 *Unauthorized Changes in the Work*

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

Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
  - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
  - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
  - 1. A mutually acceptable fixed fee; or
  - 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
    - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
    - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
    - f. When both additions and credits are involved in any one change or Change Proposal,



the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

#### 11.08 *Change of Contract Times*

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

#### 11.09 *Change Proposals*

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

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

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.

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

#### 11.10 *Notification to Surety*

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

### **ARTICLE 12—CLAIMS**

#### 12.01 *Claims*

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

Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

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

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

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

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract

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Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

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

used but not consumed which remain the property of Contractor.

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

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
  - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
  - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site.

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

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

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

D. *Contractor's Fee*

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

E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be

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

### 13.02 Allowances

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

### 13.03 Unit Price Work

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

E. *Adjustments in Unit Price*

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

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

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



3. by manufacturers of equipment furnished under the Contract Documents;
4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

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

#### 14.03 *Defective Work*

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

#### 14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor

shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

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

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

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

#### 14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.

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

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

### **15.01 *Progress Payments***

- A. *Basis for Progress Payments*: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
  - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
  - 3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

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

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
  - e. to determine that title to any of the Work, materials, or equipment has passed to

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Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
  - a. the Work is defective, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
  - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

*D. Payment Becomes Due*

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

*E. Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
  - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. The Contract Price has been reduced by Change Orders;

- i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
  - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

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

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

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of

Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

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

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15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
  2. The final Application for Payment must be accompanied (except as previously delivered) by:
    - a. all documentation called for in the Contract Documents;
    - b. consent of the surety, if any, to final payment;
    - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
    - d. a list of all duly pending Change Proposals and Claims; and
    - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
  3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with



respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Notice of Acceptability*: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 *Waiver of Claims*

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

#### 15.08 *Correction Period*

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

Paragraph 7.17.B.

- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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

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

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

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

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

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

### 16.03 *Owner May Terminate for Convenience*

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

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

16.04 *Contractor May Stop Work or Terminate*

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

**ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

17.01 *Methods and Procedures*

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

**ARTICLE 18—MISCELLANEOUS**

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner,

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Engineer, or Contractor, it will be deemed to have been validly given only if delivered:

1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

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and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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

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

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

## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

SC-1.01 Amend Paragraph 1.01.A.22 by adding the following new sentence:

In the event the Owner should not require the services of the Engineer, then the powers, duties, and responsibilities conferred in the Contract Documents to the Engineer shall be construed to be those of the Owner.

SC-1.01 Amend Paragraph 1.01.A.42 by adding the following new paragraphs:

1. Substantial Completion is further defined as (a) that degree of completion of the Project's operating facilities or systems sufficient to provide the Owner the full time, uninterrupted, continuous beneficial operation of the Work; and (b) all required functional, performance and acceptance or startup testing has been successfully demonstrated for all components, devices, equipment, and instrumentation and control to the satisfaction of the Owner in accordance with the requirements of the Specifications; and (c) all inspections required have been completed and identified conditions corrected.
2. Specific items of Work which shall be completed prior to declaration of Substantial Completion date include, but are not limited to, the following:
  - a. Conformance with all training services requirements, unless specified for post startup period.
  - b. Correction of all state, local, and other regulatory agencies defective Work lists.
  - c. Submittals have been received and approved by the Owner including, but not necessarily limited to, the following (1) draft record documents, (2) operation and maintenance manuals, including service and maintenance agreements, (3) equipment data forms, (4) manufacturers' certificates of proper installation, and (5) factory test reports.
  - d. All special accessories have been provided that are required to place each item of equipment in full operation. These special accessory items include, but are not limited to, specified spare parts, test equipment, adequate oil and grease or other lubrication, air filters, light bulbs, fuses, special tools, valve operators, and other expendable items required for startup and operation of the operating facilities or

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**PROJECT NAME**

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systems as a whole.

- e. All additional warranty or insurance coverage requirements have been provided.

SC-1.01 Amend Paragraph 1.01.A.49 by adding the following new sentence:

Work excludes the equipment, machinery, tools, vehicles, supplies, etc. used by the Contractor to complete the project.

SC-1.01 Add the following to the list of items in Paragraph 1.01.A as numbered items:

- 51. *Authorized Representative*: The individual designated by a party to represent it with respect to this Contract, as indicated in the Agreement.
- 52. *Bonds*: Performance and payment bonds and other instruments of security.
- 53. *Consequential Damages*: Specific damages that occur as a direct result of the breach of a contract that result from special or unexpected circumstances that neither party expected at the outset of the Agreement. Consequential Damages is also known as Special Damages and the terms shall have the same meaning and will be used interchangeably throughout the Contract Documents
- 54. *Final Completion*: The time at which the Work is complete, the Engineer has issued the Notice of Acceptability of Work and all deficient items are resolved to the satisfaction of the Owner.
- 55. *Request for Proposal*: A document which is authorized by Engineer and Contractor, which requests a change or changes to the Work.

## ARTICLE 2 – PRELIMINARY MATTERS

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

SC-2.01 Delete Paragraphs 2.01.A, 2.01.B, and 2.01.C in their entirety and replace them with the following:

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

2.02 *Copies of Documents*

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

- A. Owner shall furnish to Contractor 4 copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract and 1 electronic copy in Adobe Acrobat portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

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

No suggested Supplementary Conditions in this Article.

**ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

4.04 *Progress Schedule*

SC-4.04 Add the following new paragraphs immediately after Paragraph 4.04.A.1:

- a. Contractor shall prepare and provide to Engineer a 4-week look ahead schedule for discussion at each monthly construction progress meeting.
- b. Contractor shall update and recalculate every 90 calendar days the master construction schedule that will be submitted to the Engineer for discussion at the next upcoming monthly construction progress meeting.

4.05 *Delays in Contractor's Progress*

SC-4.05 Delete Paragraph 4.05.C.1 in its entirety and replace it with the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, pandemics, and earthquakes;

SC-4.05 Add the following new paragraph immediately after Paragraph 4.05.C.4:

5. Time Extensions for Abnormal Weather Conditions
  - a. *Procedure:* The procedure for the determination of time extensions for abnormal weather shall be in accordance with the following:
    - 1) The weather experienced at the project site during the contract period must be found to be abnormal, that is, severe weather that occurs beyond the adverse weather anticipated for the project location during any given month.
    - 2) The abnormal weather must actually cause a delay to the completion of the Project. The delay must be beyond the control and without the fault or negligence of the Contractor.
    - 3) Abnormal weather delay days must prevent Work on critical activities for 50 percent or more of the Contractor's scheduled workday.
  - b. *Schedule:*
    - 1) The following schedule of monthly adverse weather anticipated by the Hampton Roads Planning District Commission (HRPDC) Regional Construction Standards will constitute the baseline for evaluating extensions in time due to abnormal weather. Delays will only be allowed for the number of lost workdays in excess of the following:

Monthly Adverse Weather Anticipated: Based on a 5 Day Work Week in the Hampton Roads Area											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
6	4	4	3	4	4	4	3	3	3	3	5

2) The Contractor shall anticipate the potential loss of the number of workdays listed above for each calendar month due to weather and shall schedule the Work accordingly. Any schedules submitted shall include the above number of days each month as lost days. The Owner shall determine, upon examination of submitted evidence, whether or not weather prevented the Contractor from performing Work on the days claimed by the Contractor. The Owner’s determination shall be final and binding upon the parties.

- c. *Records:* Upon acknowledgment of the Notice to Proceed and continuing throughout the execution of the Work, the Contractor will record the occurrence of adverse weather and resultant impact to normally scheduled work.
- d. *Determination of Time Extensions for Abnormal Weather Conditions:* Abnormal weather conditions will be determined by taking the total number of documented adverse weather days that actually occurred in a given month, minus the anticipated adverse weather days (from the schedule provided above). The Contractor will convert any abnormal weather delays into calendar days and may request a time extension in accordance with the Contract Documents.

SC-4.05 Delete the last paragraph of Paragraph 4.05.E in its entirety and replace it with the following:  
Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work within 30 calendar days of the commencement of the delaying, disrupting, or interfering event. Delays not notified will not be considered.

**ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

5.02 *Use of Site and Other Areas*

SC-5.02 Delete Paragraph 5.02.A.2 in its entirety and replace it with the following:

- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) inform the Owner in writing of any and all claims within 7 calendar days of notification by third party; (c) promptly attempt to settle the claim within 60 calendar days through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (d) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or

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arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

5.03 *Subsurface and Physical Conditions*

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.A.3:

4. The following table lists the report(s) of exploration(s) and test(s) of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely: [If there are no such reports, so indicate in the table]

Report Title	Date of Report	Technical Data
a.		[Identify Technical Data]
b.		
c.		

5. The following table lists the drawing(s) of existing physical conditions at or adjacent to the Site, including those drawing(s) depicting existing surface or subsurface structures at or adjacent to the Site, except Underground Facilities, that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely: [If there are no such drawings, so indicate in the table]

Drawings Title	Date of Drawings	Technical Data
a.		[Identify Technical Data]
b.		
c.		

6. [OPTIONAL] Contractor may examine copies of reports and drawings identified in SC-5.03.A.4 and SC-5.03.A.5 that were not included with the Bidding Documents [at {location} during regular business hours or may request copies from Engineer, at the cost of reproduction] [from the designated website from which Bid documents were obtained].

5.04 *Differing Subsurface or Physical Conditions*

SC-5.04 Delete Paragraph 5.04.D in its entirety and replace it with the following:

- D. Intentionally Omitted.

5.05 *Underground Facilities*

SC-5.05 Delete Paragraph 5.05.E in its entirety and replace it with the following:

- E. Intentionally Omitted.

SC-5.05 Delete Paragraph 5.05.F.4.c in its entirety and replace it with the following:

- (c) gathered in an investigation conducted by the Engineer. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this

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PROJECT NAME

Paragraph 5.05.F.

5.06 Hazardous Environmental Conditions at Site

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

- 4. The following table lists the report(s) known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data, if any, upon which Contractor may rely: [If there are no such reports, so indicate in the table]

Report Title	Date of Report	Technical Data
a.		[Identify Technical Data]
b.		
c.		

- 5. The following table lists the drawing(s) known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data, if any, contained in such Drawing(s) upon which Contractor may rely: [If there are no such drawings, so indicate in the table]

Drawings Title	Date of Drawings	Technical Data
a.		[Identify Technical Data]
b.		
c.		

- 6. [OPTIONAL] Contractor may examine copies of reports and drawings identified in SC-5.06.A.4 and SC-5.06.A.5 that were not included with the Bidding Documents [at {location} during regular business hours or may request copies from Engineer, at the cost of reproduction] [from the designated website from which Bid documents were obtained].

SC-5.06 Add the following new paragraph immediately after Paragraph 5.06.K:

- L. Owner is required in accordance with 29 CFR 1910.1200, to inform Contractor personnel that Owner’s work centers have hazardous chemicals on site. Owner and Contractor personnel may be exposed to these hazardous chemicals while working at Owner’s work centers. A written Hazard Communication Program has been developed to inform personnel of the specific hazardous chemicals at the work center and the related safety information including protective measures, special precautions, and emergency procedures to be observed. The Hazard Communication Program including Safety Data Sheets for each hazardous chemical at the work center will be reviewed with the Contractor after the Notice to Proceed is issued. It is the responsibility of the Contractor to request a meeting with representatives of Owner’s Safety Division and/or work center staff to review this program prior to beginning any on-site efforts at the work center or centers impacted by this Project. The Contractor is responsible for communicating the information contained in the Hazard Communication Program to their personnel and subcontractors working at the work center.

**ARTICLE 6 – BONDS AND INSURANCE**

6.01 Performance, Payment, and Other Bonds

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- SC-6.01 Add the following new paragraphs immediately after Paragraph 6.01.C:
1. Required Performance Bond Form—The performance bond that Contractor furnishes will be in the form of the Performance Bond sent via Owner’s Online Oracle Enterprise Resource Planning (ERP) system
  2. Required Payment Bond Form—The payment bond that Contractor furnishes will be in the form of the Payment Bond sent via Owner’s ERP system.

6.02 *Insurance – General Provisions*

- SC-6.02 Add the following new paragraph immediately after Paragraph 6.02.B:
1. Contractor may obtain workers’ compensation insurance from an insurance provider that has not been rated by A.M. Best, provided that such provider (a) is domiciled in the state in which the Project is located, (b) is certified or authorized as a workers’ compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide workers’ compensation insurance for similar projects by the state within the last 12 months.

- SC-6.02 Delete the first sentence of Paragraph 6.02.E in its entirety and replace it with the following:  
 Owner shall deliver to Contractor, if requested, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract, if any.

- SC-6.02 Delete Paragraph 6.02.N in its entirety and replace it with the following:
- N. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 30 calendar days prior written notice has been given to Contractor (10 calendar days Non-Payment). Within 3 calendar days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.

6.03 *Contractor’s Insurance*

- SC-6.03 Delete Paragraphs 6.03.B.3 in its entirety and replace it with the following:
3. remain in effect at least 3 years after final payment and Contractor’s departure from the Site (and longer if expressly required elsewhere in this Contract), and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents;

- SC-6.03 Delete Paragraph 6.03.C in its entirety and replace it with the following:
- C. *Additional Insureds Ongoing and Completed Operations and Wavier of Subrogation:* The Contractor’s commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial or underwater vehicle liability policies, if utilized on this Project, shall:

- SC-6.03 Add the following new paragraph immediately after Paragraph 6.03.C.5:

6. The additional insureds shall include the following:

	<b>Firm Name and Address</b>
Owner:	Hampton Roads Sanitation District

	1434 Air Rail Avenue Virginia Beach, Virginia 23455
Engineer:	[Name] [Address Line 1] [Address Line 2]
[Additional]:	[Name] [Address Line 1] [Address Line 2]

SC-6.03 Add the following new paragraphs immediately after Paragraph 6.03:

- D. *Workers' Compensation and Employer's Liability:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
1. claims under worker's compensation, disability benefits, and other similar employees benefit acts.
  2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolistic worker's compensation states).
  4. Foreign voluntary worker compensation (if applicable).
  5. Owner shall be named as an Alternate Employer by endorsement.
- E. *Commercial General Liability – Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
  2. Claims for damages insured by reasonably available personal or advertising injury liability coverage.
  3. 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.
  4. Contractual Liability.
- F. *Commercial General Liability – Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability occurrence form (or equivalent) and include the following coverages and endorsements:
1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for 3 years after final payment or termination of the Contract.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and 3 years

thereafter.

2. Blanket contractual liability coverage, to the extent permitted by Law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  4. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through both ISO Endorsements CG 20 10 and CG 20 37; or their equivalent.
  5. For design professional additional insureds, ISO Endorsement CG 20 32 (latest Edition), "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
  6. Aggregate Limits will apply per Project.
- G. *Commercial General Liability – Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard ISO definition of "insured contract," except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property.
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
  4. Any exclusion of coverage relating to earth subsidence or movement.
  5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability, other than worker's compensation.
  6. Any limitation or exclusion based on the nature of Contractor's work.
  7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 80.
- H. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against 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. The automobile liability policy shall be written on an accident basis.
- I. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies. If the commercial general liability limits exceed those required in this Contract, then Contractor may reduce the umbrella or excess liability limits accordingly.
- J. *Contractor's Pollution Liability Insurance:* Contractor shall purchase and maintain a



policy covering third-party injury and property damage claims, and cleanup costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than 3 years after final completion. If written on a claims made basis the retroactive date will pre-date the commencement of Work.

- K. *Contractor's Professional Liability Insurance:* If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by negligent errors, omissions, or acts for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of 3 years after Substantial Completion. If written on a claims made basis the retroactive date will pre-date the commencement of services.
- L. *Unmanned Aerial Vehicle Liability Insurance:* If Contractor uses unmanned aerial vehicles (UAV – commonly referred to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor's compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy. Contractor shall ensure any subcontractors using UAV's carry the required liability insurance and provide the same additional insured protections.
- M. *Unmanned Underwater Vehicle Liability Insurance:* If Contractor uses unmanned underwater vehicles (UUV—are submersible vehicles that can operate underwater without a human occupant and are divided into two categories: remotely operate underwater vehicles and autonomous underwater vehicles) at the Site or in support of any aspect of the Work, Contractor shall obtain UUV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor's compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy. Contractor shall ensure any subcontractors using UUV's carry the required liability insurance and provide the same additional insured protections.
- N. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.
- O. **[NOTE: Review with Director and Insurance Consultant if project over \$10 million; CS update the DBB Insurance Review spreadsheet]** The limits of liability for the insurance required by Paragraph 6.03 for the Contractor, all subcontractors, and all subconsultants shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:
  - 1. Worker's Compensation and Employer's Liability under Paragraph 6.03.D and include Waiver of Subrogation:

<b>Worker's Compensation</b>
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State: Virginia	Statutory
Federal, if applicable (e.g., Longshoreman's)	Statutory
Voluntary Worker's Compensation	Statutory
<b>Jones Act, if applicable</b>	
Bodily Injury by Accident—Each Accident	\$ 1,000,000
Bodily Injury by Disease—Aggregate	N/A
<b>Employer's Liability</b>	
Bodily Injury—Each Accident	\$ 100,000
Bodily Injury by Disease—Each Employee	\$ 100,000
Bodily Injury/Disease Aggregate	\$ 500,000

2. Commercial General Liability under Paragraphs 6.03.E, 6.03.F, and 6.03.G and include Additional Insured and Waiver of Subrogation:

General Aggregate	\$ 2,000,000
Products—Completed Operations Aggregate	\$ 1,000,000
Personal and Advertising Injury	\$ 1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$ 1,000,000
Damage to Rented Premises—Fire Damage	\$ 100,000
Medical Expenses—Any One Person	\$ 5,000

3. Automobile Liability under Paragraph 6.03.H and include Additional Insured and Waiver of Subrogation:

Combined Single Limit	\$ 1,000,000
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4. Umbrella or Excess Liability under Paragraph 6.03.I and include Waiver of Subrogation:

Per Occurrence	\$ 5,000,000
General Aggregate	\$ 5,000,000

5. Contractor's Pollution Liability Insurance under Paragraph 6.03.J and include Additional Insured:

Each Claim	\$ 1,000,000
General Aggregate	\$ 1,000,000

6. Contractor's Professional Liability Insurance under Paragraph 6.03.K and include Additional Insured:

Each Claim	\$ 1,000,000
General Aggregate	\$ 1,000,000

7. Unmanned Aerial Vehicle Liability Insurance under Paragraph 6.03.L and include Additional Insured:

Each Claim	\$ 1,000,000
General Aggregate	\$ 1,000,000

8. Unmanned Underwater Vehicle Liability Insurance under Paragraph 6.03.M and include Additional Insured:

Each Claim	\$ 1,000,000
General Aggregate	\$ 1,000,000

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9. *Additional Coverages:* In the event the Contractor utilizes a vessel or barge in execution of the contract, all owned and non-owned vessels or barges shall be insured; including crew coverage and contractual liability. Hull insurance shall be carried for the full value of replacement. Owner shall be named as additional insured on all watercraft insurance coverage:

Protection and Indemnity	\$ 1,000,000
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If operations involve the use of owned or non-owned aircraft of watercraft, coverage must be provided for bodily injury and property damage arising out of ownership, maintenance, use, or entrustment, thereof as follows:

General Aggregate	\$ 2,000,000
Bodily Injury and Property Damage—Each Occurrence	\$ 1,000,000

6.04 *Builder’s Risk and Other Property Insurance*

SC-6.04 Delete Paragraph 6.04.A in its entirety and replace it with the following:

- A. **[NOTE: Review with Director and Insurance Consultant if project over \$10 million; CS update the DBB Insurance Review spreadsheet] [NOTE: If HRSD supplies equipment/materials and cost is over \$100,000 update Builder’s Risk to include by a comparable amount]** *Builder’s Risk:* Beginning at the commencement of construction Contractor shall purchase and maintain builder’s risk insurance upon the Work on a completed value basis for the full Contract Price **[plus \$## which includes the cost of the UPDATE]** and including materials, labor, overhead and profit, subject to such deductible amounts described herein. The Contractor shall be responsible for payment of any and all deductibles. Contractor shall have full property insurance coverage in all situations including “Named Storm” events.

For purposes of the builder’s risk and other required property insurance, “commencement of construction” first occurs when materials are in the course of delivery to the Site or an off-site storage location required to be insured if transit coverage is required, or if transit coverage is not required, when materials are delivered to the Site, or an off-site storage location required to be insured.

SC-6.04 Delete Paragraph 6.04.D in its entirety and replace it with the following:

- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder’s risk policy, or through Contractor) will provide notice of such occupancy or use to the builder’s risk insurer. The builder’s risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder’s risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder’s risk insurance.

SC-6.04 Add the following new paragraphs immediately after Paragraph 6.04.E:

- F. *Builder’s Risk Requirements:* This builder’s risk insurance shall:
1. be written on a builder’s risk “all risk” policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not

exclude the coverage of the following perils: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage, other than that caused by flood.

- a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
  - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.
2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
  3. cover 12 months of expenses (soft costs) incurred by the Contractor in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, insurance, interest expense, etc.).
  4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
  5. extend to cover damage or loss to insured property while in transit.
  6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
  7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
  8. include performance/hot testing and start-up.
  9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
  10. include the Owner and Contractor as named insureds, and Subcontractors of all tiers, and any individuals or entities required by the Supplementary Conditions to

be insured under such builder's risk policy, as insureds or named insureds. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."

11. provide insurance sublimit coverage of \$10,000,000 or the full value of the work, whichever is less, for earth movement (earthquake), flood, and windstorm.
  12. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
  13. not include a co-insurance clause or show coinsurance as 'nil'.
  14. the party responsible for purchasing and maintaining the builder's risk insurance is responsible for insurable losses in excess of the coverage limits. To avoid such losses, such responsible party will from time to time as needed during the term of the Contract, increase the builder's risk policy limits to adequate levels based on estimated replacement value, as a reimbursable expense.
- G. *Deductibles:* The Contractor shall be responsible for all policy deductibles on builder's risk or property insurance. Maximum property deductibles permitted without prior agreement with the Owner shall be \$50,000 all other perils, 2 percent of insured value for wind and hail and \$50,000 flood and earthquake. The Contractor shall be responsible for any and all deductibles under such insurance.

6.05 *Property Losses; Subrogation*

SC-6.05 Delete Paragraphs 6.05.A, 6.05.B, and 6.05.C in their entirety and replace them with the following:

- A. All policies purchased in accordance with Paragraph 6.04, expressly including the builder's risk policy, 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 insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors except for losses and damages arising out of the improper performance or the failure to perform adequate professional services. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused except for losses and damages arising out of the improper performance or the failure to perform adequate professional services. 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 or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Intentionally Omitted.
- C. Intentionally Omitted.

## ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

### 7.02 *Supervision and Superintendence*

SC-7.02 Delete Paragraph 7.02.A in its entirety and replace it with the following:

- A. All Work performed pursuant to the Contract Documents shall be consistent with the Contractor’s highest and best work, and exhibit that level of skill, attention, priority, and judgment provided by first class experienced Contractors in the greater Hampton Roads area (the “Standard of Care”). The Contractor shall supervise and direct the Work in accordance with the Standard of Care.

### 7.03 *Labor; Working Hours*

SC-7.03 Delete Paragraph 7.03.C in its entirety and replace it with the following:

- C. Regular working hours will be Monday through Friday 7:00 a.m. to 5:00 p.m. Contractor may Work at the Site outside regular working hours or on a holiday observed by Owner with a written request, subject to approval by the Owner. Weekend construction activities and any pile driving shall begin no earlier than 8:00 a.m.

### 7.07 *Concerning Subcontractors and Suppliers*

SC-7.07 Amend Paragraph 7.07.A by adding the following new sentence:

Contractor shall perform a minimum of [25 percent for pipeline or other similar project] **OR** [10 percent for pump station, plant, directional drill or other similar projects] of the on-site labor with its own forces.

SC-7.07 Add the following new paragraphs immediately after Paragraph 7.07.M:

- N. Contractor shall perform or undertake the responsibilities of any Subcontractor or
- O. 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.
- P. 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 the Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as many otherwise be required by Laws and Regulations.

### 7.10 **[OPTIONAL – Projects for abating or preventing air or water pollution]** *Taxes*

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

- B. Contractor is advised that this is a pollution control Project and as such certain materials and equipment will be exempt from Virginia sales tax in accordance with §58.1-3660 of the Code of Virginia, as amended, upon a request by the Contractor to the Owner’s Contract Specialist. Specific items that are not tax exempt include temporary construction material and equipment, administrative facilities, consumable items, landscaping, restoration work, and City or County work included in the Project.

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Information to be submitted shall include the (1) Project title, (2) Project location, (3) Anticipated Project completion date, and (4) Description and list of the equipment and facilities to be purchased.

7.12 *Record Documents*

SC-7.12 Add the following new paragraph immediately after Paragraph 7.12.A:

- B. Further requirements for the maintenance of record documents and the documentation of as-built data are defined further in the technical specifications. The Contractor's lack of meeting the record document requirement listed herein and further defined in the technical specifications can be a cause for the delay of progress payment of payments by the Owner to the Contractor until the needed information is properly verified by the Engineer.

7.13 *Safety and Protection*

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

1. The following Owner safety programs are applicable to the Work: [Expressly identify by title and/or date, any such Owner safety programs].

7.17 *Contractor's General Warranty and Guarantee*

SC-7.17 Amend Paragraph 7.17.C.2 by adding the following new sentence:

Normal wear and tear are defined as unavoidable minor deterioration of the Work resulting from normal use.

7.18 *Indemnification*

SC-7.18 Delete Paragraph 7.18.A in its entirety and replace it with the following:

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of the Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs losses, damages and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to, damage to or destruction of tangible property (other than work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, and Subcontractor, and 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.

7.20 *Submittals Using Project Management Software*

SC-7.20 Add the following new section immediately after Section 7.19:

7.20 *Submittals Using Project Management Software*

- A. Contractor shall submit the following information and documentation using the Owner's Enterprise Project Management (Unifier) system:
1. Pay applications.

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2. Shop Drawings, Operations and Maintenance (O&M) Manuals, and Material and Spare Parts Turnover forms.
  3. Certificate of Substantial Completion.
  4. Other forms and submittals as mutually agreed upon.
- B. Contractor personnel shall attend Owner's training to implement usage of software.
- C. **[OPTIONAL-SWIFT for VCWRLF and/or WIFIA]** Contractor shall submit the following information and documentation using the Compliance Online Reporting (CÔR) system:
1. Certified Payrolls.
  2. Monthly Contractor Reports.
  3. Monthly Personnel Rosters.
  4. Any miscellaneous reporting, tracking and/or logs as directed or requested by the Owner.

## ARTICLE 8 – OTHER WORK AT THE SITE

### 8.02 **[OPTIONAL]** *Coordination*

SC-8.02 Delete Paragraph 8.02.A in its entirety and replace it with the following:

- A. Owner intends to contract with others for the performance of other work at or adjacent to the Site.
1. **[identify individual or entirety]** shall have authority and responsibility for coordination of the various contractors and work forces at the Site;
  2. The following specific matters are to be covered by such authority and responsibility: **[itemize such matters]**.
  3. The extent of such authority and responsibilities is: **[provide the extent]**.

### 8.04 *Claims Between Contractors*

SC-8.04 Add the following new section immediately after Section 8.03:

#### 8.04 *Claims Between Contractors*

- A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineering, or Resident Project Representative, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law.
- B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, Resident Project Representative (RPR) or Owner's designee, and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially



out of any action, legal or equitable, brought by any other contractor against Owner, Engineer, Engineer's Consultants, or the RPR to the extent said claim is based on or arises out of Contractor's performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, RPR, or Owner's designee or permit any action to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner or Engineer, or RPR or designee on account of any such damage or Claim.

- C. If Contractor is delayed at any time in performing or furnishing Work by any act or negligence of another contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, and RPR for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or RPR for activities that are their respective responsibilities.

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

No suggested Supplementary Conditions in this Article.

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

##### *10.03 Resident Project Representative*

**[NOTE: Engineer to review and modify as required based on split of duties between RPR and Contract Administrator]**

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

- C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The responsibilities, authority, and limitations of the RPR are limited to those of Engineer in accordance with this Paragraph 10.03 and as set forth elsewhere in the Contract Documents. The authority and responsibilities of RPR follows:
  - 1. *Schedules:* Review and monitor the Progress Schedule, Schedule of Submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
  - 2. *Conferences and Meetings:* Conduct or attend meetings with Contractor, such as preconstruction conferences, progress meetings, Work conferences, and other Project related meetings.
  - 3. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

4. *Liaison:*
  - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee and assist in providing information regarding the provisions and intent of the Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.
5. *Submittals:*
  - a. Record date of receipt of Submittals and samples approved by Contractor.
  - b. Receive Submittals and samples furnished at the Site by Contractor, and notify Engineer of availability of samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Construction requiring a Shop Drawing or sample for which RPR believes that the Submittal has not been accepted by Engineer.
6. *Review of Work, Rejection of Defective Work, Inspections, and Tests:*
  - a. Conduct on-site observations of the Work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Inform Engineer and Contractor whenever RPR believes that any Work is defective.
  - c. Advise Engineer whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or whenever RPR believes Work should be uncovered for observation, or requires special testing, inspection, or approval.
  - d. Monitor tests, equipment and systems start-ups, and operating and maintenance training are conducted in the presence of appropriate personnel, and that the Contractor maintains adequate records thereof.
  - e. Observe, record and report to Engineer appropriate details relative to the test procedures and startups.
  - f. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project; record the results of these inspections and report to Engineer.
7. *Interpretation of Contract Documents:* Inform Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
8. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and provide recommendations to Engineer;

transmit to Contractor the decisions issued by Engineer.

9. *Records:*

- a. Maintain at the Site files for correspondence, conference records, Submittals including Shop Drawings and Samples, reproductions of original Contract Documents including all Addenda, the signed Agreement, Work Change Directives, Change Orders, Field Orders, additional Drawings issued after the Effective Date of the Agreement, Engineer's written clarifications and interpretations, progress reports, and other Project related documents.
- b. Keep a diary or logbook recording pertinent Site conditions, activities, decisions, and events.

10. *Reports:*

- a. Furnish Engineer periodic reports of progress of the Work and of Contractor's compliance with the Progress Schedule and Schedule of Submittals submissions.
- b. Consult with Engineer in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Assist in drafting proposed Change Orders, Work Change Directives, and Field Orders; obtain backup material from Contractor as appropriate.

11. *Payment Requests:* Review each Application for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to: (a) the Schedule of Values, accepted by Engineer, (b) relevant cost of the Work provisions, (c) Work completed, and (d) materials and equipment delivered to the Site but not incorporated in the Work.

12. *Certificates, Operation and Maintenance Manuals, Record Documents, and Site Records:* During the course of the Work, review and monitor that these documents and other data required by the Contract Documents to be assembled, maintained, and furnished by Contractor, noting whether the documentation is applicable to the items actually installed, and deliver to Engineer for its review and acceptance prior to final payment for that part of the Work.

13. *Completion:*

- a. Conduct an inspection in the company of Engineer, Owner, and Contractor to determine Substantial Completion and prepare a list of items to be completed or corrected; submit to Engineer a list of observed items requiring completion or correction.
- b. Conduct final inspection in the company of Engineer, Owner, and Contractor and notify Contractor and Engineer in writing of all particulars in which this inspection reveals that the Work is incomplete or defective.
- c. Observe that all items on final list have been completed, corrected, or accepted by Owner and make recommendations to Engineer concerning acceptance.

14. *Provide Direction During Emergency:* Provide direction to Contractor during times of emergency or when imminent risk of death or serious risk of danger to individuals or property is likely.
15. *Limitations of Authority:* RPR shall not:
  - a. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or equal” items), unless authorized by Engineer.
  - b. Exceed limitations of Engineer’s authority as set forth in the Contract Documents.
  - c. Undertake any of the responsibilities of Contractor, Contractor’s authorized representative or designee, Subcontractors, or Suppliers.
  - d. Accept Submittals from anyone other than Contractor.
  - e. Authorize Owner to occupy the Project in whole or in part; or
  - f. Participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by Engineer.

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

##### **11.02** [OPTIONAL: Project Funding that includes Davis-Bacon] Change Orders

SC-11.02 Add the following new paragraph immediately after Paragraph 11.02.A.4:

5. In accordance with Title 29 of the Code of Federal Regulations (CFR) §1.6(c)(2)(iii)(A) and 88 Federal Register (FR) 57526; the Change Order shall incorporate an updated Davis-Bacon wage determination(s) if:
  - a) The Change Order includes additional, substantial construction, alteration, and/or repair Work not within the scope of work of the original Contract.
    - 1) The amount of the Change Order for the Work not within the scope of work of the original Contract shall exceed \$2.5 million or 20 percent of the total project cost.
  - b) The Owner requires the Contractor to perform work for an additional time period not originally obligated.
    - 1) This does not apply where the Contractor is simply given additional time to complete its original commitment or where the additional construction, alteration, and/or repair Work in the modification is merely incidental.
    - 2) Incidental time for new scope of work shall be an increase of 10 percent to the Contract Times.
  - c) If the Contract Davis-Bacon wage determination(s) were updated by the Department of Labor (DOL) prior to the execution date of the approved Change Order, the Contract wage determination(s) will become inactive upon the date of the approved Change Order. The Change Order will include the updated Davis-Bacon wage determination(s) which will be required to be used for all the Work.
    - 1) The inactive wage determination(s) may be accessed on the DOL approved website for informational purposes only [§1.6(a)(2)(iii)].

11.05 *Owner-Authorized Changes in the Work*

SC-11.05 Add the following new paragraph immediately after Paragraph 11.05.C:

- D. Changes in the Work requested by Owner will be documented by the Engineer through the use of a Request for Proposal. This document will be prepared by the Engineer and shall describe the proposed changes. The document shall be authorized by the Engineer and Contractor and provided to the Owner for information.

11.09 *Change Proposals*

SC-11.09 Delete Paragraph 11.09.B.5 in its entirety and replace it with the following:

5. Intentionally Omitted.

**ARTICLE 12 – CLAIMS**

12.01 *Claims*

SC-12.01 Add the following new paragraphs immediately after Paragraph 12.01.A.4:

5. *Notice:* 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 an adjustment of the Contract Times that should be allowed as a result of any order of Owner pursuant to this Article or other occurrence for which the Contract Documents provide that such adjustment(s) may be made, a Claim may be made therefor. Written notice of intent to make such a Claim shall be submitted to the other party promptly and in no event more than 15 calendar days after the start of the occurrence or event giving rise to the Claim.
6. *Documentation:* Substantiating documentation shall be submitted by the claiming party within 30 calendar days after delivery of the notice required by Paragraph 12.01.A.5.
7. *Decision:* The other party shall render a decision on the Claim no more than 30 calendar days after the receipt of the substantiating documentation required by Paragraph 12.01.A.6. This decision will be final and binding unless the claiming party gives notice of intention to exercise its rights under Article 17 within 30 calendar days of receipt of the decision and exercises such rights within 30 calendar days of giving the notice of intent.
8. *Time Limit Extension:* The time limits of Paragraphs 12.01.A.6 and 12.01.A.7 may be extended by mutual agreement.

**ARTICLE 13 – COST OF THE WORK; ALLOWANCES, UNIT PRICE WORK**

13.01 *Cost of the Work*

SC-13.01 Amend Paragraph 13.01.B.1 by adding the following new paragraph:

Such employees shall also include Contractor's Project Manager, Project Engineer and other similar positions, if applicable. For these employees to be included in the Cost of Work, documentation shall be provided showing that these individuals have actually been an integral part of the project, at least 10 hours per week, and have consistently charged time to the project. Payroll records for these individuals shall be provided if requested by the Owner.

SC-13.01 Delete Paragraph 13.01.B.5.c in its entirety and replace it with the following:

- c. *Construction Equipment and Machinery:*
  - 1) Rentals of all construction equipment and machinery, and the parts thereof in

accordance with rental agreements approved by Owner, 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.

- 2) Costs for equipment and machinery owned by Contractor or a Subcontractor will be paid at a rate not to exceed that shown for such equipment in the Rental Rate Blue Book for Construction Equipment. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs. Costs will include the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work. Equipment or machinery with a value of less than \$1,000 will be considered small tools.
- 3) No markup is allowed on equipment rented or leased from any company owned in total or in part by Contractor or a Subcontractor, or is owned by the same holding company or a company with a close legal affiliation to Contractor or Subcontractor, since markups are included in rental or lease rates.

### 13.03 *Unit Price Work*

SC-13.03 Delete Paragraph 13.03.E in its entirety and replace it with the following:

- E. *Adjustments in Unit Price:* Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  1. If the extended price of a particular item of Unit Price Work amounts to 5 percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than 25 percent from the estimated quantity of such item indicated in the Agreement;
  2. If there is not corresponding adjustment with respect to any other item of Work; and
  3. If Contractor believes that Contractor has incurred additional expense as a result thereof, Contractor may submit a Change Proposal, or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, seeking an adjustment in Contract Price.

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

No suggested Supplementary Conditions in this Article.

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

### 15.01 *Progress Payments*

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

1. No more than 30 calendar days after presentation of the Application of Payment to Owner with Engineer's affirmative recommendation, the amount (subject to the

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provisions of Paragraph 15.01.E) will become due and when due will be paid by Owner to the Contractor.

**15.03**      *Substantial Completion*

SC-15.03    Add the following new paragraph immediately after Paragraph 15.03.B:

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

**15.06**      *Final Payment*

SC-15.06    Add the following new paragraph immediately after Paragraph 15.06.A.2.e:

- f.    Documentation of resolution of all claims against Contractor or Subcontractors by any third party.

**ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

No suggested Supplementary Conditions in this Article.

**ARTICLE 17 – FINAL RESOLUTION OF DISPUTES**

**17.01**      *Methods and Procedures*

SC-17.01    Delete Section 17.01 in its entirety and replace it with the following:

**17.01**      *Methods and Procedures*

- A.    Engineer’s action under Paragraph 11.11.C or a denial pursuant to Paragraphs 11.11.C shall become final and binding 30 calendar days after receipt of written notice of Owner’s action or decision unless, within that time period, Owner or Contractor gives to the other party written notice of intent to submit the Claim to a process of bilateral negotiations as set forth below.
- B.    Within 30 calendar days of the delivery of such notice, Owner, Contractor, and Engineer (if requested) shall meet and confer regarding the Claim. A good-faith effort to negotiate resolution shall be made by both parties.
- C.    If the negotiations are unsuccessful, management representatives of Owner, Contractor, and Engineer (if requested) at least one tier above the individuals who met initially shall meet, confer, and negotiate within 45 calendar days of the closure of the unsuccessful negotiations.
- D.    If the claim is not resolved by negotiation, either Owner or Contractor may request within 10 calendar days of termination of negotiations non-binding mediation of any Claim submitted to Engineer for a decision under Paragraph 11.11 before such decision becomes final and binding. If both parties agree to mediation in writing within 10 calendar days, the mediation will proceed and 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 11.11.

- E. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 calendar days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- F. If the Claim is not resolved by negotiation and mediation, Engineer's action under Paragraph 11.11 or a denial pursuant to Paragraphs 11.11 shall become final and binding 30 calendar days after termination of the mediation unless, within that time period, Owner or Contractor:
  - 1. gives to the other party written notice of intent to submit the Claim to a court of competent jurisdiction, or
  - 2. agrees with the other party in writing to submit the Claim to another dispute resolution process.
- G. Notwithstanding any applicable statute of limitations, a party giving notice under this Paragraph 17.01 shall commence an action on the Claim within 6 months of said notice. Failure to do so shall result in the Claim being time-barred and Engineer's action or denial shall become final and binding.

*17.02 Attorney's Fees*

SC-17.02 Add the following new section immediately after Section 17.01:

*17.02 Attorney's Fees*

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorney's fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, considering the parties' initial demand or defense positions in comparison with the final results.

**ARTICLE 18 – MISCELLANEOUS**

*18.01 Giving Notice*

SC-18.01 Delete Paragraph 18.01.A.3 in its entirety and replace it with the following:

- 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line and follow up within 7 calendar days as listed in Paragraphs 18.01.A.1 or 18.01.A.2.

*18.07 Controlling Law*

SC-18.07 Add the following new paragraph immediately after Paragraph 18.07.A:

- B. Any formal proceedings shall be instituted in the Circuit Court of the City of Virginia Beach, Virginia, or the United States District Court for the Eastern District of Virginia, Norfolk Division.



# **TECHNICAL SPECIFICATIONS**