

CITY OF CRETE, NEBRASKA
CITY COUNCIL REGULAR MEETING
March 21, 2017

Notice of the meeting was given by posting and publishing in The Crete News, the appointed method for giving notice as shown by the Proof of Publication attached to the minutes. Advance notice of the meeting was also given to the Mayor and City Council. Pursuant to Section 84-1412(8) of the Nebraska Open Meetings Act, the City has posted a current copy of the Open Meetings Act, Laws of the State of Nebraska in the back of the Council Chambers. Additional copies are available to read. The City may consider items listed on the agenda in random order. All proceedings shown were taken while the meeting was open to the attendance of the public.

Those in attendance pledged allegiance to the flag.

1. Open Meeting
2. Roll Call
3. Special Order of Business
 - 3.A. Columbarium Plans and Specifications
3/21/17 Public Works: Recommend approving the plans, specifications and engineer's estimate submitted for the concrete work for cemetery columbariums Carried with a motion by Judy Henning and a second by David Bauer.
David Bauer: Aye, Judy Henning: Aye
Aye: 2, No: 0
 - 3.B. Ordinance 2000 Zoning District Change Block 121
3/21/17 Public Works: Recommend approval of Ordinance 2000 Carried with a motion by Judy Henning and a second by David Bauer.
David Bauer: Aye, Judy Henning: Aye
Aye: 2, No: 0
 - 3.C. Substation Upgrade Bids
3/21/17 Public Works: Recommend approval of the low bid by Harold Scholz for substation upgrades at a cost of \$439,350 Carried with a motion by Judy Henning and a second by David Bauer.
David Bauer: Aye, Judy Henning: Aye
Aye: 2, No: 0
4. Officers' Reports
5. Adjournment

Mayor

(SEAL)

City Clerk-Treasurer

I, Jerry Wilcox, City Clerk for the City of Crete, hereby certify that the foregoing is a true and correct copy of the proceedings had and done by the Mayor and Council. I hereby certify that a copy of the Open Meetings Act was posted in the back of the Council Chambers. I certify that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk. I certify that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting and that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public. I certify that the minutes were in written form and available for public inspection within ten working days and prior to the next convened meeting of the City Council. I certify that all news media requesting notification concerning meetings of the City Council were provided with advance notification of the time and place of said meeting and the subjects to be discussed.

City Clerk-Treasurer

(S E A L)

Public Works Committee Meeting
March 21, 2017 6:00 PM
City Hall
Council Chambers
243 East 13th Street

1. Open Meeting

The City has posted a copy of the Open Meetings Act, Laws of the State of Nebraska, in the back of the council chambers. Additional copies are available to read, if anyone wishes one during this meeting, please advise. As each agenda item is considered, if there are any questions concerning the agenda item please advise. The Committee may consider items listed on the agenda in random order. The City has assisted listening devices available, if needed please advise. This meeting was posted in three public places to-wit:

City Hall - 1st Floor
Post Office - Lobby
City Bank and Trust - Front Entry

2. Roll Call

Attendance of Committee members will be recorded to determine the presence of a quorum for official actions.

3. Special Order of Business

The Committee may take action to hear testimony in favor of or in opposition to, discuss/limit discussion and take action to approve or disapprove a recommendation to the City Council on any matter presented under this title.

A. Columbarium Plans and Specifications

Review plans and specifications

B. Ordinance 2000 Zoning District Change Block 121

An ordinance to change the zoning for Block 121 from commercial to industrial.

C. Substation Upgrade Bids

Bids were opened on March 15, 2017 at 2:00 PM

4. Officers' Reports

Reports may be given by Department Heads, other Committees and Council members concerning current operations of the City. Questions may be asked and answered. No action can be taken by the Committee on matters presented under this title except to answer any question posed and to refer the matter for further action.

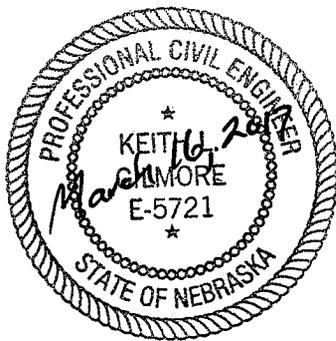
5. Adjournment

The City Council Committee will review the above matters and take such actions as they deem appropriate. The Committee may enter into closed session to discuss any matter on this agenda when it is determined by the Committee that it is clearly necessary for protection of the public interest or the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting, or as otherwise allowed by law. Any closed session shall be limited to the subject matter for which the closed session was called. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The City of Crete assures that no person shall on the grounds of race, color, national origin, age, disability, handicap or sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of the City receiving Federal financial assistance. To report discrimination, contact the City Clerk's office.

COLUMBARIUM CONCRETE WORK

CRETE, NEBRASKA

2017



226.333

I hereby certify that these Drawings and Project Manual were prepared by me, or under my direct supervision, and that I am a duly registered Professional Engineer under the laws of the State of Nebraska.



Keith L. Gilmore, P.E.
GILMORE & ASSOCIATES, INC.

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ADVERTISEMENT FOR BIDS

The City of Crete, Nebraska, will receive bids for the construction of Columbarium Concrete Work until _____ p.m., on _____, 2017, at the City Office, 243 East 13th Street, Crete, Nebraska, 68333. At that time, all bids will be opened and publicly read aloud.

The Work to be done for this Project is as follows:

COLUMBARIUM CONCRETE WORK

Furnish labor, materials, tools, and equipment required for the construction of the Columbarium foundations, concrete walks, and concrete flat work as shown on the drawings.
(LUMP SUM)

The Bid shall be an aggregate bid on all Work to be performed. Details of construction, materials to be used, and methods of installation for this Project are given in the Drawings and Project Manual. A Contract will be awarded to the low, responsive, responsible bidder, based on the total aggregate bid for the Work, construction time schedule, materials, and past performance on contracts with the Owner.

Bidding Documents, including Drawings and Project Manual, are on file at the City Office, 243 East 13th Street, Crete, Nebraska. Copies of these documents for bidding purposes may be obtained from the Owner in PDF form at no cost.

Complete sets of Bidding Documents as issued by the Owner must be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors of misinterpretations resulting from the use of incomplete sets of Bidding Documents, or copies of Bidding Documents obtained in electronic media form, internet plan rooms or other internet sites, or copies of Bidding Documents obtained from any source other than the Issuing Office.

No Bids shall be withdrawn after the opening of Bids without consent of the City of Crete, Nebraska, for a period of 45 days after the scheduled time of opening Bids.

The City of Crete, Nebraska, reserves the right to reject any and all Bids and to waive any technicalities in bidding.

Dated at Crete, Nebraska, this _____ day of March, 2017.

CITY OF CRETE, NEBRASKA

Roger Foster, Mayor

NOTE: This EJCDC Document has been modified as indicated herein. A ~~strike through~~ indicates that language has been deleted from this EJCDC Document. An underline indicates that the language has been added to this EJCDC Document.

INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACTS

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INSTRUCTIONS TO BIDDERS

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ARTICLE 1 – DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office* – The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered – Gilmore & Associates, Inc.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement or Invitation to Bid may be obtained from the Issuing Office. A refund in the amount stated in the Advertisement for Bids, if any, will be given to each document holder of record who returns a complete set of Bidding Documents in good condition with no markings, within 10 days after opening of Bids.
- 2.02 Complete sets of Bidding Documents as issued by the Issuing Office shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents, or copies of Bidding Documents obtained from any source other than the Issuing Office.
- 2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license or grant for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder's qualifications to perform the Work, within 7 days of Owner's request, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below or elsewhere in the Bidding Documents.
- A. Evidence of Bidder's authority to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract.
- 3.02 Bidder's state contractor license number, if applicable.

ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

- 4.01 *Subsurface and Physical Conditions*
- A. The Supplementary Conditions identify:
- ~~1. These reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site.~~
 - ~~2. These drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).~~
- B. ~~Copies of reports and drawings referenced in Paragraph 4.01.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions has been identified and established in Paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.~~

4.02 Underground Facilities

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, ~~including Owner~~, or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

4.03 Hazardous Environmental Condition

- A. ~~The Supplementary Conditions identify any reports and drawings known to Owner relating to a Hazardous Environmental Condition identified at the Site. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to the Owner.~~

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

- 4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions and Paragraph SC-4.02 of the Supplementary Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 4.06 of the General Conditions and Paragraph SC-4.06 of the Supplementary Conditions.

- 4.05 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.

- ~~4.06 A. Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of contract documents (other than portions thereof related to price) for such other work.~~

- ~~B. Paragraph 6.13.C of the General Conditions indicates that if an Owner safety program exists, it will be noted in the Supplementary Conditions.~~

4.07 It is the responsibility of each Bidder before submitting a Bid to:

- A. examine and carefully study the Bidding Documents, and the other related data identified in the Bidding Documents;
- B. visit the Site and become familiar with and satisfy Bidder as to the general, local, groundwater, and Site conditions that may affect cost, progress, and performance of the Work;
- C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;

- D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in Paragraph 4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in the Paragraph 4.06 of the Supplementary Conditions as containing reliable "technical data";
- E. consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs;
- F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- G. become aware of the general nature of the work to be performed by Owner and others at the Site, if any, that relates to the Work as indicated in the Bidding Documents;
- H. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
- I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- J. Study and carefully correlate Bidder's knowledge and observations with the Bidding Documents and such other related data.
- K. Obtain such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Bidding Documents.

4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction, if any, that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

~~ARTICLE 5 — PRE BID CONFERENCE~~

~~5.01 — A pre Bid conference will be held at _____ [a.m.][p.m.] local time on _____ at _____. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are [required] [encouraged] to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.~~

ARTICLE 6 – SITE AND OTHER AREAS

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

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

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

ARTICLE 8 – BID SECURITY

- ~~8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of five percent of Bidder's maximum Total Aggregate Base Bid price in the form of a certified check, bank money order, or a Bid bond (on the form attached) issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions.~~
- ~~8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or 66 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.~~
- ~~8.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.~~

ARTICLE 9 – CONTRACT TIMES

- 9.01 The times ~~{by which Milestones are to be achieved and}~~ for Start of Construction, Substantial Completion, and readiness for final payment are to be set forth by Bidder in the Bid and will be entered into the Agreement (or incorporated therein by reference to the specific language of the Bid). ~~Substantial Completion is desired [within _____ days] [on or before _____].~~ The times will be taken into consideration by Owner during the evaluation of Bids, and it will be necessary for the apparent Successful Bidder to satisfy Owner that it will be able to achieve Substantial Completion and be ready for final payment within the times designated in the Bid.

ARTICLE 10 – LIQUIDATED DAMAGES

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

ARTICLE 11 – SUBSTITUTE AND “OR-EQUAL” ITEMS

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or those ~~substitute or~~ “or-equal” materials and equipment approved by Engineer and identified by Addendum, without consideration of possible substitute or other “or-equal” items. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed substitute or “or-equal” item. Prior to the Effective Date of the Agreement, no item of material or equipment will be considered by Engineer as a ~~substitute or~~ “or-equal” unless written request for approval has been submitted by Bidder or Supplier and has been received by the Engineer at least 15 days prior to the date for receipt of Bids. Each such request shall conform to the requirements of Paragraph SC-6.05 of the General Supplementary Conditions and shall include the name of the material or equipment for which application for “or-equal” status is being submitted and a complete description of the proposed item including drawings, cuts, performance and test data, and any other information necessary or required by Engineer for an evaluation. A statement setting forth any changes in other materials, equipment, or work that incorporation of the proposed item would require shall be included. The burden of proof of the merit of the proposed item is upon Bidder or Supplier. Engineer’s decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner. If in the Engineer’s sole discretion an item of material or equipment proposed by Bidder or Supplier does not qualify as an “or-equal” item, it will be considered a proposed substitute item and application for acceptance will not be considered by Engineer until such application is submitted by Contractor after the Effective Date of the Agreement.

Whenever it is indicated in the Contract Documents that a substitute or “or-equal” item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance may also be considered by the Engineer after the Effective Date of the Agreement. The procedure for submission of any such application for substitute or “or-equal” items by the Contractor after the Effective Date of the Agreement and consideration by Engineer is set forth in SC-6.05 of the Supplementary Conditions.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS AND OTHERS

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

ARTICLE 13 – PREPARATION OF BID

- 13.01 The Bid Form is included with the Bidding Documents. Additional copies may be obtained from Engineer.
- 13.02 All blanks on the Bid Form shall be completed in ink or by typewriter and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each Bid item and alternate listed therein. In the case of optional alternatives the words “No Bid,” “No Change,” or “Not Applicable” may be entered.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.06 A Bid by an individual shall show the Bidder’s name and official address.
- 13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.08 All names shall be typed or printed in ink below the signatures.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.10 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.11 The Bid shall contain evidence of Bidder’s authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder’s state contractor license number, if any, shall also be shown on the Bid Form.

~~ARTICLE 14 – BASIS OF BID; COMPARISON OF BIDS~~

~~14.01 Lump Sum~~

~~A. NOT USED~~

14.02 Unit Price

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.
- B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.

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

~~14.03—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 11.02.B of the General Conditions.~~

~~14.04—Completion Time Comparisons~~

- ~~A. Bid prices will be compared after adjusting for differences in the time designated by Bidders for Substantial Completion. The adjusting amount will be determined at the rate set forth in the Contract Documents for liquidated damages for failing to achieve Substantial Completion for each day before or after the desired date appearing in Article 9 above.~~

ARTICLE 15 – SUBMITTAL OF BID

- 15.01 With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form, and, if required, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid security, and the following documents:
- 15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement or Invitation to Bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to the Village of Carleton, P.O. Box 168, Carleton, NE, 68326.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 16.02 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 – OPENING OF BIDS

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

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

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

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or if doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner may also reject the Bid of any Bidder that fails to provide any certifications or documentation required by the Bidding Documents to be submitted prior to award of the Contract. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.
- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, additions, unit prices, dates of substantial completion and final completion, construction start date, and other data, as may be requested in the Bid Form or prior to the Notice of Award. Discrepancies in the Bid between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies in the Bid between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies in the Bid between words and figures will be resolved in favor on the words.
- 19.04 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.
- 19.05 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work in accordance with the Contract Documents.
- 19.06 If the Contract is to be awarded, Owner will award the Contract to the lowest Bidder whose Bid, after evaluation by Owner, indicates to Owner that the award is in the best interests of the Project. The Owner shall have the right to accept substitutions, alternates, or additions, if any, in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low responsive Bidder on the basis of the sum of the total aggregate base bid and any substitutions, alternates, or additions accepted by Owner.
- 19.07 If the Contract is to be awarded, Owner will give Successful Bidder a Notice of Award within 65 days after the day of the Bid opening. No other act of Owner or others will constitute acceptance of a Bid.

ARTICLE 20 – CONTRACT SECURITY AND INSURANCE

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

ARTICLE 21 – SIGNING OF AGREEMENT

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

deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

ARTICLE 22 – SALES AND USE TAXES

22.01 Project is exempt from the Nebraska State Sales Tax and Use Taxes on materials and equipment to be incorporated in the Work. Refer to the Supplementary Conditions for additional information. The Contractor shall not include in his Bid price sales tax on any materials, equipment, and labor considered to be exempt.

ARTICLE 23 – RETAINAGE

23.01 The amount of retainage on pay requests to be withheld shall be ten (10) percent.

THIS BID IS BEING SUBMITTED TO:

The City of Crete, Nebraska
243 East 13th Street
P.O. Box 86
Crete, NE 68333-0086

PROJECT IDENTIFICATION: Columbarium Concrete Work
City of Crete, Nebraska

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

Bidder accepts all of the terms and conditions of the Invitation for Bids and Instructions to Bidders. This Bid will remain subject to acceptance for 45 days after the day of Bid opening. Bidder will sign and deliver the required number of counterparts of the Agreement with other documents required by the Bidding Requirements within 15 days after the date of Owner's Notice of Award.

In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:

- (a) Bidder has examined and carefully studied the Bidding Documents and the following Addenda, receipt of all which is hereby acknowledged: (List Addenda by Addenda Number and Date)

- (b) Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, performance, and furnishing of the Work;
- (c) Bidder is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
- (d) Bidder has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Article 4.02.A of the Standard General Conditions. Bidder acknowledges that such reports and drawings are not Contract Documents and may not be complete for Bidder's purposes. Bidder acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bidding Documents with respect to Underground Facilities at or contiguous to the Site. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder and safety precautions and programs incident thereto. Bidder does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price, and other terms and conditions of the Bidding Documents.

- (e) Bidder is aware of the general nature of Work to be performed by Owner and others at the Site that relates to Work for which this Bid is submitted as indicated in the Bidding Documents.
- (f) Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports, and drawings identified in the Bidding Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- (g) Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents and the written resolution thereof by Engineer is acceptable to Bidder, and the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
- (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm, or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

Bidder will complete the Work in accordance with the Contract Documents for the following prices. The Work shall be bid complete in place. Bids shall include sales tax and all other applicable taxes and fees.

BID SCHEDULE

COLUMBARIUM CONCRETE WORK

Furnish all labor, materials, tools, and equipment required for the concrete construction of the Columbarium site. Work shall include Columbarium foundations, sidewalks, and concrete flat work as shown on the drawings. Bid shall include all taxes, fees, and permits. (LUMP SUM)

_____ DOLLARS (\$ _____)

The Bid shall be an aggregate bid on all Work to be performed. Details of construction, materials to be used, and methods of installation for this Project are given in the Drawings and Project Manual.

Complete sets of Bidding Documents as issued by the Issuing Office must be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents, or copies of Bidding Documents obtained in electronic media form, internet plan rooms or other internet sites, or copies of Bidding Documents obtained from any source other than the Issuing Office.

The Bidder shall thoroughly examine the construction site, soil conditions, contract documents, addenda, scope, and intent of the Work prior to preparing his Bid for items listed in the Bid Schedule as "Lump Sum". Failure of the Bidder to accurately estimate the quantity of materials or suitability of his construction means to perform the Work required in the Contract Documents shall not be a basis for additional payments for any item listed in the Bid Schedule as "Lump Sum" and no additional compensation shall be made. Cost of all materials and work necessary for, or incidental to, the construction of the Project as shown on the Drawings or described in the Project Manual, and not specifically listed in the Bid Schedule, shall be incorporated by the Bidder in the "Lump Sum" item of the Bid Schedule as he deems appropriate. Complete compensation will be considered as included in the payment for the "Lump Sum" item of the Bid Schedule.

Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.

Bidder agrees that the Work will be substantially completed and ready for final payment in accordance with Article 14.07 of the Standard General Conditions on or before the date indicated in the Agreement.

The undersigned agrees to furnish the required insurance certificates, and to execute the Contract within 15 days from and after the acceptance of this Bid, and further agrees to begin and complete all Work under the Contract within the time limit set forth in the Agreement.

The Owner reserves the right to award the Contract to the lowest, responsive, responsible Bidder, based on the sum of the total aggregate bid for the Work, start date, completion date, materials, and past performance on contracts with the Owner.

Bidders shall comply with Fair Labor Standards, as defined in Section 73-104-R.S., Nebraska Statutes, in pursuit of all business related to this Project, including execution of the Contract on this Work for which Bids are being submitted.

The Contractor shall state his intended starting date and completion dates as specified in Article 3.5. The Owner reserves the right to reject any and all Bids and to waive any technicalities or informalities in bidding.

NOTE: Bidders shall not add any conditions or qualifying statements to this Bid as otherwise the Bid may be declared irregular as not being responsive to the Invitation for Bids.

By _____

OFFICIAL ADDRESS:

Title _____

Telephone: _____

Fax No.: _____

Email Address: _____

COLUMBARIUM CONCRETE WORK

Contractor's Starting Date: _____

Contractor's Substantial Completion Date: _____

Contractor's Final Completion Date: _____

Notice of Award

Date: _____

Project: Columbarium Concrete Work - Crete, Nebraska

Owner: City of Crete, Nebraska

Owner's Contract No.: N/A

Contract: Columbarium Concrete Work - Crete, Nebraska

Engineer's Project No.: 226.333

Bidder:

Bidder's Address:

You are notified that your Bid dated _____ for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for:

Columbarium Concrete Work
Crete, Nebraska

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

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

5 sets of the Drawings will be delivered separately or otherwise made available to you immediately.

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

1. Deliver to the Owner 3 fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security Bonds as specified in the Instructions to Bidders, General Conditions, and Supplementary Conditions.

You must comply with the following conditions prior to starting construction on this project.

1. Deliver the Certificates of Insurance as specified in the Instructions to Bidder, General Conditions, and Supplementary Conditions.

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

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

CITY OF CRETE, NEBRASKA

Owner

By: _____

Authorized Signature

Mayor

Title

Copy to Engineer

NOTE: This EJCDC Document has been modified as indicated herein: A ~~strike out~~ indicates that language has been deleted from this EJCDC Document. An underline indicates that the language has been added to this EJCDC Document.

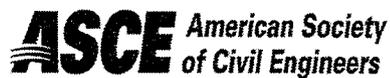
AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. The language contained in the Suggested Instructions to Bidders (EJCDC C-200, 2007 Edition) is also carefully interrelated with the language of this Agreement. Their usage is discussed in the Narrative Guide to the 2007 EJCDC Construction Documents (EJCDC C-001, 2007 Edition).

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AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between _____ City of Crete, Nebraska _____ (“Owner”) and
_____ (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 - WORK

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

Columbarium Concrete Work
Crete, Nebraska

ARTICLE 2 - THE PROJECT

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

Columbarium Concrete Work
Crete, Nebraska

ARTICLE 3 - ENGINEER

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

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Dates for Substantial Completion, Final Completion, and Final Payment as indicated by the Contractor in the Bid and incorporated herein:*

B. The Work will be substantially completed on or before _____, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before _____.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$100 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

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

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

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

~~B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:~~

<u>UNIT PRICE WORK</u>						
<u>Item</u>			<u>Estimated</u>	<u>Bid Unit</u>		
<u>No.</u>	<u>Description</u>	<u>Unit</u>	<u>Quantity</u>	<u>Price</u>		<u>Bid Price</u>

C. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the first day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, and if approved by Owner, there will be no additional retainage; and

- b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 90 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 10 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

~~7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of _____ percent per annum.~~

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, groundwater, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has correlated, obtained, and carefully studied (or assumes the responsibility for having done so) all additional or supplementary, examinations, investigations, explorations, tests, studies, and data concerning conditions, (surface, subsurface, and underground facilities) at or contiguous to the site; considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer, through issued addendum or addenda is acceptable to Contractor. When said conflicts, errors, ambiguities, or discrepancies have not been resolved by Engineer because of insufficient time or otherwise, Contractor has included in the Bid the better quality of work, or compliance with the more stringent requirement resulting in a greater cost; and said greater cost is included in the contract price.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 8, inclusive).
 - ~~2. Performance Bond (pages 1 to 3, inclusive).~~
 - ~~3. Payment Bond (pages 1 to 3, inclusive).~~
 4. Other bonds (pages NA to _____, inclusive).
 - a. _____ (pages _____ to _____, inclusive).
 - b. _____ (pages _____ to _____, inclusive).
 - c. _____ (pages _____ to _____, inclusive).
 5. General Conditions (pages 1 to 62, inclusive).
 6. Supplementary Conditions (pages 1 to 10, inclusive).
 7. Specifications as listed in the table of contents of the Project Manual.
 8. Drawings consisting of a cover sheet and sheet numbered 1, inclusive with each sheet bearing the following general title: Columbarium Concrete Work - Crete, Nebraska.
 9. Addenda (numbers ____ to ____, inclusive).
 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 3, inclusive).
 - ~~b. Documentation submitted by Contractor prior to Notice of Award (pages __ to __, inclusive).~~

11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. Notice to Proceed (pages 1 to 1, inclusive).
- b. Work Change Directives.
- c. Change Orders.

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

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

10.02 *Assignment of Contract*

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

10.03 *Successors and Assigns*

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

10.04 *Severability*

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

10.05 *Contractor's Certifications*

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

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

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

OWNER:

CONTRACTOR:

CITY OF CRETE, NEBRASKA _____

By: _____

By: _____

Title: Mayor _____

Title: _____

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

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

243 East 13th Street _____

P.O. Box 86 _____

Crete, NE 68333-0086 _____

License No.: _____

(Where applicable)

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

Agent for service of process:

Notice to Proceed

Date: _____

Project: Columbarium Concrete Work - Crete, Nebraska

Owner: City of Crete, Nebraska

Owner's Contract No.: N/A

Contract: Columbarium Concrete Work - Crete, Nebraska

Engineer's Project No.: 226.333

Contractor:

Contractor's Address:

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

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

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

_____ *[add other requirements].*

Acceptance of Notice

Contractor

CITY OF CRETE, NEBRASKA
Owner

Given by:

Given by:

Authorized Signature

Authorized Signature

Title

Mayor

Title

Date

Date

Copy to Engineer

Progress Estimate

Contractor's Application

For (contract): Columbarium Concrete Work
Crete, Nebraska

Application Number:

Application Period:

Application Date:

Item Specification Section No.	A Description	B Scheduled Value	C Work Completed		E Materials Presently Stored (not in C or D)	F Total Completed and Stored to Date (C + D + E)	G % (E) B	G Balance to Finish (B - F)
			D From Previous Application (C+D)	D This Period				
Totals								

Progress Estimate

Contractor's Application

For (contract): Columbarium Concrete Work
Crete, Nebraska

Application Number:

Application Period:

Application Date:

Item		A		B	C	D	E	F		G
Bid Item No.	Description	Bid Quantity	Unit Price	Bid Value	Estm. Qty. Installed	Value	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (E) / B	Balance to Finish (B-F)
COLUMBARIUM CONCRETE WORK										
Furnish labor, materials, tools, and equipment required for the construction of the Columbarium site. Work shall include Columbarium foundations, sidewalks, and concrete flat work as shown on the drawings. Bid shall include all taxes, fees, and permits.										
1.		1								
TOTAL BASE BID, COLUMBARIUM CONCRETE WORK, Inclusive:										

Change Order

No. _____

Date of Issuance: _____

Effective Date: _____

Project: Columbarium Concrete Work - Crete, Nebraska	Owner: City of Crete, Nebraska	Owner's Contract No.: N/A
---	--------------------------------	---------------------------

Contract:	Date of Contract:
-----------	-------------------

Contractor:	Engineer's Project No.: 226.333
-------------	---------------------------------

The Contract Documents are modified as follows upon execution of this Change Order:

Description: _____

Attachments (list documents supporting change):

CHANGE IN CONTRACT PRICE:

CHANGE IN CONTRACT TIMES:

Original Contract Price:
\$ _____

Original Contract Times: Working days Calendar days
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

[Increase] [Decrease] from previously
approved Change Orders No. ___ to No. ___:
\$ _____

[Increase] [Decrease] from previously approved Change Orders
No. _____ to No. _____:
Substantial completion (days): _____
Ready for final payment (days): _____

Contract Price prior to this Change Order:
\$ _____

Contract Times prior to this Change Order:
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

[Increase] [Decrease] of this Change Order:
\$ _____

[Increase] [Decrease] of this Change Order:
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

Contract Price incorporating this Change
Order:
\$ _____

Contract Times with all approved Change Orders:
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

RECOMMENDED:
GILMORE & ASSOCIATES, INC.
By: _____
Engineer (Authorized Signature)

ACCEPTED:
CITY OF CRETE, NEBRASKA
By: _____
Mayor (Authorized Signature)

ACCEPTED:
By: _____
Contractor (Authorized Signature)

Date: _____

Date: _____

Date: _____

Approved by Funding Agency (if applicable):

Date: _____

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

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and

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

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

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

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

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

B. *Intent of Certain Terms or Adjectives:*

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

C. *Day:*

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

D. *Defective:*

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

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

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

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

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on

Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

3.02 *Reference Standards*

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

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

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

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

3.06 *Electronic Data*

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

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

4.01 *Availability of Lands*

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

4.02 *Subsurface and Physical Conditions*

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

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

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

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

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

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and

contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

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

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

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

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

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

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

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

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

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

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

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

5.05 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

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

members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

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

5.07 *Waiver of Rights*

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

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

5.08 *Receipt and Application of Insurance Proceeds*

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

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

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's

interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

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

6.02 *Labor; Working Hours*

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

6.03 *Services, Materials, and Equipment*

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

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

6.04 *Progress Schedule*

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

6.05 *Substitutes and "Or-Equals"*

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

- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

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

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
- 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

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

required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner,

Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

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

6.08 *Permits*

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

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought

by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and

shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

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

1. *Shop Drawings:*

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

2. *Samples:*

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

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

C. *Submittal Procedures:*

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

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

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

6.18 *Continuing the Work*

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

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by Engineer;
 - 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. use or occupancy of the Work or any part thereof by Owner;
 - 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 - 6. any inspection, test, or approval by others; or
 - 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

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

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

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 Coordination

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

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

7.03 *Legal Relationships*

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

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

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

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

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

8.12 *Compliance with Safety Program*

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

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

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

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or

continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

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

9.03 *Project Representative*

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

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

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

9.07 *Determinations for Unit Price Work*

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

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not

exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

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

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

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

10.03 *Execution of Change Orders*

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

10.04 *Notification to Surety*

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

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data

shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

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

11.01 *Cost of the Work*

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

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of

said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

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

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

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

limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

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

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to

the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

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

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

12.01 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

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

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

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

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or

neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

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

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

13.01 Notice of Defects

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

13.02 Access to Work

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

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

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

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

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

1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

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

13.09 *Owner May Correct Defective Work*

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

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

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

14.02 *Progress Payments*

A. Applications for Payments:

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an

Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

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

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or

- involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
- b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

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

D. *Reduction in Payment:*

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

14.03 *Contractor's Warranty of Title*

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

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before

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

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

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

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment:*

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

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying

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

C. *Payment Becomes Due:*

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

14.08 *Final Completion Delayed*

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

14.09 *Waiver of Claims*

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

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

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

15.02 *Owner May Terminate for Cause*

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

so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

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

15.03 *Owner May Terminate For Convenience*

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

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days

to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

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

ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

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

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

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

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC C-700 (2007 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

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

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix “SC” added thereto.

SC-1.01 DEFINED TERMS

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

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms will initial or all capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

SC-1.01.A.21 GENERAL REQUIREMENTS

Delete Paragraph 1.01.A.21 in its entirety and insert the following in its place:

21. *General Requirements* - Article 3 of the Project Manual. The General Requirements pertain to all articles and sections of the Specifications.

SC-1.01.A.29 OWNER

At the end of Paragraph 1.01.A.29 add the following paragraph:

Whenever the word “Owner” appears in the Contract Documents, it shall actually refer to the City of Crete, Nebraska. The Owner shall, in conjunction with the Engineer, be the final arbiter in all controversies concerning the fulfillment of this Contract. No changes in any of the details of the Drawings and Project Manual shall be made without the approval of the Owner. No extras will be allowed that are not agreed to in writing. The Owner will approve final acceptance of the Work and payment to the Contractor.

SC-1.02.E FURNISH, INSTALL, PERFORM, PROVIDE

Delete Paragraphs 1.02.E.1 and 1.02.E.2 in their entirety and insert the following paragraphs in their place:

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply, deliver, and incorporate in the Work said services, materials, or equipment, including all necessary labor, materials, equipment, and everything necessary to perform the Work indicated, unless specifically limited in the context.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to furnish and incorporate in the Work said services, materials, or equipment, including all necessary labor, materials, equipment, and everything necessary to perform the Work indicated, unless specifically limited in the context.

Add the following new paragraph immediately after Paragraph 1.02.E.4:

5. The word "supply," when used in connection with services, materials, or equipment, shall mean to furnish and install and incorporate in the Work said services, materials, or equipment, including all necessary labor, materials, equipment, and everything necessary to perform the Work indicated, unless specifically limited in the context.

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.02.A COPIES OF DOCUMENTS

Delete Paragraph 2.02.A in its entirety and insert the following in its place:

- A. Owner shall furnish to Contractor a PDF file for the project manual and drawing.

SC-2.03.A COMMENCEMENT OF CONTRACT TIMES; NOTICE TO PROCEED

Add the following sentence at the end of Paragraph 2.03.A:

The Owner reserves the right to terminate the Contract at no cost to Owner at any time prior to issuance of Notice to Proceed.

SC-2.07.A INITIAL ACCEPTANCE OF SCHEDULES

Modify the first sentence of Paragraph 2.07.A by adding the following words to the beginning of the sentence:

If requested by the Owner,

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

SC-3.01 INTENT

Add the following new paragraphs immediately after Paragraph 3.01.C:

- D. The Specifications may vary in form, format, and style. Some articles and sections of the Project Manual may be written in varying degrees of streamlined or declarative style and some articles and sections may be relatively narrative by comparison. Omissions of such words and phrases as "the Contractor shall", "in conformity with", "as shown", or "as specified" are intentional in streamlined articles or sections. Omitted words and phrases shall be supplied by reference. Similar types of provisions may appear in various parts of an article or section within a part depending on the format of the article or section. The Contractor shall not take advantage of any variation of form, format, or style in making claims for extra Work.
- E. The cross referencing of Project Manual articles or sections within each article or section of the Project Manual is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not the cross referencing is provided in each section or article or whether or not the cross referencing is complete.

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

SC-4.01 AVAILABILITY OF LANDS

Add the following new paragraph immediately after Paragraph 4.01.C:

- D. The Contractor shall not enter private property, if any, within the Project limits for construction purposes until he has received official notification from the Owner that the necessary, temporary, or permanent easements have been obtained for the property in question. The Contractor shall hold and save the Owner and Engineer free and harmless from liability of any nature or kind arising from any use, trespass, or damage occasioned by his operation on premises of a third person, except where permanent facilities are shown on the Drawings or specified. All such areas so disturbed by the construction operation shall be restored by the Contractor to a condition equivalent to that existing prior to use by the Contractor.

SC-4.05 HAZARDOUS ENVIRONMENTAL CONDITON AT SITE

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

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

ARTICLE 5 – BONDS AND INSURANCE**SC-5.04 CONTRACTOR'S INSURANCE**

SC-5.04.B.1 Following is a list of other individuals or entities to be included on policies as additional insureds:

Owner: City of Crete, Nebraska
Engineer: Gilmore & Associates, Inc.

SC-5.04.B.4 Modify Article 5.04.B.4 by striking out the words:

“to whom a certificate of insurance has been issued”

As so modified, Article 5.04.B.4 remains in effect.

SC-5.04.B.6 Modify Article 5.04.B.6 by striking out the words:

“to whom a certificate of insurance has been issued”

As so modified, Article 5.04.B.6 remains in effect.

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

- C. The limits of liability for the insurance required by Paragraph 5.04.B of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation, and related coverages under Paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:
 - a. State: Statutory
 - b. Applicable Federal (e.g., Longshoreman's) Statutory

- | | | |
|----|----------------------|-------------|
| c. | Employer's Liability | \$1,000,000 |
|----|----------------------|-------------|
2. Contactor's General Liability under Paragraphs 5.04.A.3 through 5.04.A.5 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:
- | | | |
|----|---|-------------|
| a. | General Aggregate (except Products - Completed Operations) | \$1,000,000 |
| b. | Products - Completed Operations Aggregate | \$1,000,000 |
| c. | Personal and Advertising Injury (Per person/Organization) | \$1,000,000 |
| d. | Each Occurrence (Bodily Injury and Property Damage) | \$1,000,000 |
| e. | Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable. | |
| f. | Excess Liability: | |
| | General Aggregate | \$1,000,000 |
| | Each Occurrence | \$1,000,000 |
3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:
- | | | |
|----|------------------|-------------|
| a. | Bodily Injury: | |
| | Each Person | \$1,000,000 |
| | Each Accident | \$1,000,000 |
| b. | Property Damage: | |
| | Each Accident | \$1,000,000 |
4. The Contractual Liability coverage required by Paragraph 5.04.B.3 of the General Conditions shall provide coverage for not less than the following amounts:
- | | | |
|----|---|-------------|
| a. | General Aggregate | \$1,000,000 |
| b. | Each Occurrence (Bodily Injury and Property Damage) | \$1,000,000 |
5. With respect to all insurance required by Paragraph 5.04, Contractor agrees to waive all rights of subrogation against Owner, Engineer, and each additional insured identified in the Supplementary Conditions.

SC-5.06 PROPERTY INSURANCE

SC-5.06.A Delete Paragraph 5.06.A in its entirety and insert the following in its place:

- A. Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. Contractor shall be responsible for any deductible or self-insured retention. This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or loss payee;

2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by these Supplementary Conditions;
3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
5. allow for partial utilization of the Work by Owner;
6. include testing and startup;
7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee; and
8. comply with the requirements of Paragraph 5.06.C of the General Conditions.

SC-5.10 PARTIAL UTILIZATION, ACKNOWLEDGEMENT OF PROPERTY INSURER

SC-5.10.A Add the following new paragraphs immediately after Paragraph 5.10.A:

- B. All insurance required by the Contract Documents, or by Laws and Regulations shall remain in full force and effect on all phases of the Work, whether or not the Work is occupied or utilized by Owner, until all Work included in the Agreement has been completed and final payment has been made.
- C. Nothing contained in the insurance requirements shall be construed as limiting the extent of Contractor's responsibility for payment of damages resulting from his operations under the Agreement. Contractor agrees that Contractor alone shall be completely responsible for procuring and maintaining full insurance coverage as provided herein or as may be otherwise required by the Contract Documents. Any approval by Owner or Engineer shall not operate to the contrary.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

SC-6.05 SUBSTITUTES AND "OR EQUALS"

SC-6.05.A.1 Delete Paragraph 6.05.A.1 in its entirety and insert the following in its place:

"Or-Equal" Item: If in Engineer's sole discretion an item of material or equipment proposed by Bidder or Supplier at least 15 days prior to the date for receipt of Bids or by Contractor after the Effective Date of the Agreement, is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item in which case, review and approval of the proposed item may, in

Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items.

For the purposes of this Article 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; and
- b. Contractor certifies that: (i) there is no increase in cost to the Owner; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

SC-6.05.A.2 Delete Paragraph 6.05.A.2 in its entirety and insert the following in its place:

Substitute Items:

- a. If in Engineer's sole discretion an item of material or equipment proposed by Bidder or Supplier at least 15 days prior to the date for receipt of Bids or by Contractor after the Effective Date of the Agreement does not qualify as an "or-equal" item under sub-Article 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The procedure for review by Engineer will be as set forth in Article 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall first make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by Engineer in evaluating the proposed substitute item.

United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the Contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.”

SC-6.12 RECORD DRAWINGS

SC-6.12.A Add the following new paragraph immediately after Paragraph 6.12.A:

- B. All changes in the Work shall be noted daily by the Contractor on the Drawings. Contractor shall provide Engineer with one set of reproducible Record Drawings showing all changes in the Work.

SC-6.17 SHOP DRAWINGS AND SAMPLES

SC-6.17.A.1.b Add the following new paragraph immediately after Paragraph 6.17.A.1.b:

- c. When Shop Drawings are submitted for the purpose of showing the installation in greater detail, their review by Engineer shall not excuse Contractor from the requirements shown or specified in the Contract Documents.

SC-6.17.D ENGINEER'S REVIEW

SC-6.17.D.3 Add the following new paragraphs immediately after Paragraph 6.17.D.3:

4. Shop Drawings and Sample submittals not conforming to the requirements of Paragraphs 6.17.A, 6.17.B, and 6.17.C shall be returned to Contractor without action for resubmittal and the resulting delay shall be entirely the responsibility of the Contractor.
5. Engineer's review and approval of Shop Drawing and Sample submittals shall not:
 - a. relieve the Contractor of the responsibility for any error in details, dimensions, or other information that may exist in such submittals;
 - b. constitute a blanket approval of dimensions, quantities, or details of the materials or equipment shown;
 - c. approve variations from additional details or instructions previously furnished by Engineer to Contractor; and
 - d. shall not relieve the Contractor of the full responsibility of meeting all of the requirements of the Contract Documents.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

SC-9.02 VISITS TO SITE

SC-9.02.B Add the following new paragraph immediately after Paragraph 9.02.B:

Engineer may require Contractor to furnish additional data about the proposed substitute item.

SC-6.05.F Delete Paragraph 6.05.F in its entirety and insert the following in its place:

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

SC-6.06 **CONCERNING SUBCONTRACTORS, SUPPLIERS, AND OTHERS**

SC-6.06.G Add the following new paragraph immediately after Paragraph 6.06.G:

H. For additional requirements, see Federal and State Requirements contained in Article 3, General Requirements of the Specifications.

SC-6.08 **PERMITS**

Delete the first sentence of Paragraph 6.08 in its entirety and insert the following in its place:

Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses, including any fines or penalties assessed against Owner as a result of Contractor's failure to obtain the same or follow conditions contained therein.

SC-6.09 **LAWS AND REGULATIONS**

Amend the first sentence of Paragraph 6.09.B by adding at the end of the sentence immediately after the word "Work" the following:

", and to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, and consultants of each of them."

Add the following new section immediately after Paragraph 6.09.C:

D. **"LB 403 Contract Provisions - NEW EMPLOYEE WORK ELIGIBILITY STATUS:**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the

- C. A special request by the Contractor to the Engineer for a visit to the Project Site shall be made at least 48 hours in advance.

Failure of the Contractor to have a representative who is in responsible charge of the Project, or who has been designated as the Contractor's representative, present at the construction site to accompany the Engineer in the visit will result in the issuance of a statement to the Contractor for the Engineer's time and expenses, based on the Engineer's current Schedule of Rates and Charges. The payment of these engineering charges will be due and payable within 30 days, and must be paid before subsequent progress estimates will be allowed.

SC-9.05 REJECTING DEFECTIVE WORK

SC-9.05.A Add the following paragraph immediately after Paragraph 9.05.A:

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

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

SC -13.03 TESTS AND INSPECTIONS

SC-13.03.A Add the following new paragraph immediately after Paragraph 13.03.A:

1. Contractor shall coordinate the services of the testing laboratories to perform all inspections, tests, or approvals required by the Contract Documents.

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

- B. Contractor shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
1. that costs incurred in connection with tests or inspections of the Work conducted pursuant to Paragraph 13.04.B that is found not to be defective shall be paid as provided in Paragraph 13.04.D; and
 2. as otherwise specifically provided in the Contract Documents.

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

- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense.

And add the following new paragraph immediately after Paragraph 13.03.F:

- G. Independent laboratories proposed to be used by Contractor shall be approved by Engineer.

SC-13.04 UNCOVERING WORK

SC-13.04.B Delete Paragraph 13.04.B in its entirety and insert the following in its place:

- B. If Engineer considers it necessary or advisable that covered Work previously tested, inspected, or approved in accordance with the Contract Documents and that has been accepted by Engineer, as evidenced by an approved

- Application for Payment for that portion of the Work, be observed by Engineer or inspected or tested by others; Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- SC-13.04.C** Modify the beginning of the first sentence of Paragraph 13.04.C by striking out the words "If it is found that the uncovered Work is defective" with the words "If it is found that the uncovered Work required by Paragraph 13.04.B is defective."
- SC-13.04.D** Modify the beginning of the first sentence of Paragraph 13.04.D by striking out the words "If the uncovered Work is found not to be defective" with the words "If the uncovered Work required by Paragraph 13.04.B is found not to be defective."

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02.A APPLICATIONS FOR PAYMENT

- SC-14.02.A.1** Modify the first sentence of Paragraph 14.02.A.1 by striking out the words "At least 20 days" and replacing them with the words "At least 10 days."

SC-14.02.B REVIEW OF APPLICATIONS

- SC-14.02.B.1** Modify the first sentence of Paragraph 14.02.B.1 by striking out the words "Engineer will, within 10 days" and replacing them with the words "Engineer will, within 7 days."

SC-14.02.C PAYMENT BECOMES DUE

- SC-14.02.C.1** Delete Paragraph 14.02.C.1 in its entirety and insert the following in its place:

1. Thirty days after approval of the Application for Payment by Owner, the amount recommended by Engineer, will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

SC-14.07.C PAYMENT BECOMES DUE

- SC-14.07.C.1** Delete Paragraph 14.07.C.1 in its entirety and insert the following in its place:

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

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

SC-15.02 OWNER MAY TERMINATE FOR CAUSE

- SC-15.02.A.1** Modify Paragraph 15.02.A.1 by deleting the word "persistent."

ARTICLE 3
GENERAL REQUIREMENTS
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ARTICLE 3

GENERAL REQUIREMENTS

3.0 - PROJECT DESCRIPTION

The Project consists of the construction of P.C. concrete and related work as shown on the drawings.

Drawings and Project Manual were prepared by Gilmore & Associates, Inc., Consulting Engineers of Columbus, Nebraska for the City of Crete, Nebraska, who is the Owner of the Project.

3.1 - RIGHT OF ENTRY

Representatives of the Owner and the Engineer shall have access to the Work wherever it is in preparation or progress. The Contractor shall provide proper facilities for such access and inspection.

3.2 - EXISTING UTILITIES

The Contractor shall determine the actual location of all existing utilities prior to starting any work that may cause damage to such utilities. The Contractor shall indemnify and hold harmless the Owner, Engineer, and their agents and employees from and against all claims, damages, losses, and expenses, including attorneys' fees, arising as a result of damage to existing utilities caused, in whole or in part, by the Contractor or any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

Any information concerning underground utilities shown on the Drawings is intended to be merely an aid to the Contractor. The accuracy of information furnished with respect to underground utilities is not guaranteed, and the Contractor must independently verify any such information in accordance with the previous paragraph of these General Requirements.

The Contractor shall notify all utility companies who may have installations in the area where the Work is to be performed and solicit their aid in locating utilities, including, but not limited to, water, gas or other fuel, electrical, and telephone installations. All utilities encountered must be kept in operation by the Contractor, and must be protected and/or repaired if damaged. The Contractor shall have the responsibility of negotiating with each utility having lines, wires, or other appurtenances in the construction area, an agreement which establishes the responsibilities for the repair of any utility damaged by the Contractor. Such agreements shall establish under what conditions the cost of the repair will be the Contractor's responsibility and under what conditions the cost will be the utility's responsibility.

3.3 - PROTECTION OF PROPERTY

The following provisions shall not limit the generality of other requirements in these Contract Documents.

The Contractor shall do all things necessary or expedient to properly protect underground sprinkler systems, existing trees, shrubs, concrete retaining walls, streets, fences, power lines, and other utilities, and any and all property of others from damage. In the event that any such property is damaged during the course of construction of the Project, the Contractor shall restore, or make arrangements to have restored, any and all of such damaged property immediately to as good a state as before such damage occurred. All costs associated with the repair or restoration of any damaged property shall be the responsibility of the Contractor, unless prior arrangements or agreements have been made in accordance with Article 3.2, Existing Utilities. All fences, which are necessarily opened or moved during the construction of the Project, shall be replaced in as good condition as they were found. The Contractor shall be responsible for all loss of, or damage to, property, whether on or off the right-of-way, caused by the construction of the Project.

The Project, from the commencement of Work to acceptance or termination by the Owner, shall be under the charge and control of the Contractor. During such period of control by the Contractor, all

risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Contractor, by reason of any act of God, or other casualty or cause, whether or not the same shall have occurred by reasons of the Contractor's negligence.

3.4 - OBSERVATION AND TESTING

All Work performed and all material and equipment furnished by the Contractor shall strictly conform to the Contract Documents. Competent labor, mechanics, and tradesmen shall be used on all Work.

The acceptance at any time of the materials by or in behalf of the Owner shall not bar the Owner from future rejection if they are subsequently found to be defective or inferior in quality or uniformity to the material specified.

Whenever any material shall be rejected by the Engineer, such material shall be removed at once from the line of Work at the Contractor's expense, and shall not be brought back. Work rejected by the Engineer shall be replaced with approved Work at the expense of the Contractor.

The Engineer shall have the right to observe and witness routine testing of all Work and materials covered by the Specifications. He shall have the right to approve the manner in which special or requested tests are conducted.

The Contractor shall be required to perform all of the testing required by the Contract Documents and to furnish material certificates for quality assurance on all materials furnished, as specified in the Contract Documents.

The Contractor shall be required to pay for all tests and other related documents and information required to be performed or submitted by the Contract Documents. The number of tests for each of the several parts of the Work shall be as stated in the Contract Documents. Results of all tests and material certificates shall be submitted to the Engineer on a timely basis. The Contractor shall also be responsible for the cost of any retesting by coring of hardened concrete required because of failure of original tests. No separate payment will be made to the Contractor for such testing, as such costs shall be considered subsidiary to Work for which payment is made. All tests required to be performed by the Specifications shall be performed by an approved independent testing laboratory, and the costs thereof shall be paid by the Contractor unless otherwise specifically stated in the Project Manual.

The Contractor shall furnish, at his own expense, such materials and facilities as the Engineer may reasonably require for the purpose of project observation. This shall not include the expense of the Engineer's representative. Work rejected by the Engineer shall be replaced with approved Work at the expense of the Contractor.

Any inspection, tests, or approval of waiver of test shall not in any way relieve the Contractor of full responsibility for furnishing apparatus, equipment, and all materials meeting the guaranteed performance and requirements of the Contract.

The Contractor shall obtain a testing laboratory and pay for soil investigation and tests, including soil proctors and density tests, to demonstrate compliance with the specification requirements. In order to verify compaction requirements of the backfill for sanitary sewer and water trenches, and paving subgrade construction, the Contractor shall obtain a testing laboratory and pay for the furnishing of at least one proctor curve for the Project. Proctor curves shall be furnished for the soil profiles encountered on the Project and borrow sites. Contractor shall hire a soils laboratory approved by the Owner/Engineer, to perform all in-place compaction tests, in accordance with the following schedule:

Concrete Subgrade	2 per nodule (circle)
Concrete Sidewalk	1 per 24-foot segment or less – walk

The Owner/Engineer shall randomly select the location and depth of the compaction tests. Compaction test locations shall vary in depth and horizontal reference to the Project centerline. Testing depths and locations shall be noted on the reports. The Contractor shall have the materials

testing laboratory establish the optimum moisture content, range, and maximum dry density before beginning any tests for compaction. The contact name, telephone number, cellular phone number, and address of the testing laboratory and copies of all information shall be provided to the Engineer. The proctors and all in-place compaction tests shall be signed by a professional Engineer of the State of Nebraska prior to submittal. All costs associated with materials testing, as specified in this Project Manual, shall be the responsibility of the Contractor. In addition, the costs associated with all of the required submittal data and information shall also be the responsibility of the Contractor.

The Contractor shall give the Owner/Engineer 24 hours notice before any segment is ready for testing so that the Owner/Engineer or his representative may be present to observe and select the test location. Approval of pay requests are subject to receipt of all testing information; thus, the Contractor shall coordinate his work accordingly.

3.5 - TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Owner would like to have the Work completed as soon as possible in the 2017 construction season.

Construction time will be figured in calendar days rather than working days. The Contractor shall state, on the Bid, his anticipated starting date and the anticipated completion date for construction of the Work. The Contractor shall note that his anticipated starting and completion dates, as stated in the Bid, will be given consideration in both the award of this Contract and the issuance of the Notice to Proceed. The award shall be made to the responsible Bidder whose Bid is the most advantageous to the Owner, price and other factors considered. A Notice to Proceed will be issued based on the time of completion as indicated by the Contractor on his Bid.

The Contract time may be extended by the Owner in an amount equal to the time lost due to delays beyond the control of the Contractor, if he makes a claim, therefore, in accordance with the Standard General Conditions. Such delays shall include fire, flood, labor strikes, epidemics, or acts of God. No extension of time will be given for abnormal weather conditions, other than as specifically designated in the preceding sentence, or for subsoil conditions, unless requested in writing by the Contractor and agreed to by the Owner.

The parties hereby agree that damages occasioned the Owner by the Contractor's failure to complete the Work within the Contract time are difficult to measure. Therefore, failure of the Contractor to complete all Work under this Contract, as required herein above, shall result in the Contractor paying the Owner the amounts specified in the Agreement per calendar day as agreed-upon liquidated damages accrued by the Owner as a result of not having 100 percent use of the facilities, and for administrative costs, professional services, and other overheads: \$100 per calendar day.

Said payment of liquidated damages at the daily rate specified in the Agreement shall continue until all Work is satisfactorily completed, as specified, and so determined by the Engineer. The Owner shall have the right to collect the above-described liquidated damages by deducting said amounts from funds payable to the Contractor, or by such other means as are available. In addition to the above liquidated damages for delay in performance, the Owner reserves all rights and remedies he may have against the Contractor for breach of Contract.

Basic professional engineering services include, but are not limited to, construction observation, restaking, subgrade testing, progress review meetings, and preparation of pay request forms.

3.6 - APPLICABLE CODES, REGULATIONS, AND WORKMANSHIP

All Work shall conform to the requirements of all national, state, and local laws, ordinances, building codes, or other regulations that are in effect at the place of Work. Workmanship shall be of the best known to the trades. No makeshifts will be permitted anywhere in the Work. Whenever any Work is rejected by the Engineer, such rejected Work shall be removed at once from the Project and shall be replaced with Work conforming to the requirements of the Contract Documents.

3.7 - STORAGE OF MATERIALS AND EQUIPMENT

Limited storage space for materials and equipment will be available at the Site. The Contractor shall store materials and equipment in a manner which will preserve quality and fitness. Storage areas shall be subject to approval of the Owner.

3.8 - CONSTRUCTION FACILITIES BY CONTRACTOR

The Contractor shall provide and maintain suitable sanitary facilities for construction personnel for duration of Work, and remove upon completion of Work. The Contractor shall provide fence, barricades, and/or watchmen to prevent access of unauthorized persons to the Site where Work is in progress. The Contractor shall remove all construction facilities upon completion of Work, and clean up areas disturbed by construction to a machine finish.

3.9 - SAFETY REQUIREMENTS

The Contractor shall be solely and exclusively responsible for providing temporary ladders, guard rails, shoring, bracing, dewatering, if required, warning signs, night lights, and other safeguards desirable or required, and shall comply with all federal, state, and municipal safety requirements. The Contractor shall be responsible for protecting the Work and stored materials until completion and acceptance of the Work by the Owner. It shall be the sole and exclusive responsibility of the Contractor to provide a safe place to work for all laborers, mechanics, and other persons employed on, or in connection with, the Project, and nothing in these Contract Documents shall be construed to give any of such responsibility to the Owner or the Engineer.

The Contractor shall, in accordance with the above and at his own expense, erect suitable barriers around all excavations, obstructions, or dangerous areas, and shall place and maintain sufficient lighting during the night for this purpose on or near the Work. The Contractor will, at all times, until its completion and final acceptance, protect his Work, apparatus, and material from accidental or other damage and shall make good any damages thus occurring at his own expense.

The Contractor will be held solely responsible for the safety, proper construction, and perfection of the entire Work, until the same has been finally accepted and paid for by the Owner. The Contractor shall be solely responsible for conducting his Work in compliance with the latest requirements of the "Occupational Safety and Health Act," the Nebraska State Department of Labor and Safety, and requirements of such other agencies that have jurisdiction over such operations. The Owner/Engineer shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. He shall not be responsible for the Contractor's failure to carry out the Work in accordance with the requirements of the Contract.

3.10 - SHOP DRAWINGS

The Contractor shall submit to the Engineer for review, in accordance with the accepted schedule of shop drawing submissions, copies of all shop drawings, as specified in this section. The data shown on the shop drawings shall be complete with respect to dimensions, design criteria, materials of construction and the like to enable the Engineer to review the information as required. Within 14 days after the Notice to Proceed has been issued, the Contractor shall submit to the Engineer six copies of a schedule of shop drawing submittals, which shall indicate the date the Engineer can expect to receive the shop drawings on the various equipment and construction details. Schedules to assure completion within the contract period will be the sole responsibility of the Contractor; however, the Contractor shall submit shop drawings on an earlier date than indicated on the schedule if requested to do so by the Engineer.

Shop drawings submittals shall include, but not be limited to:

- Concrete mix design

The Contractor shall check and verify all field measurements, all dimensions on shop and setting drawings, and all schedules required for the Work of all the various trades. All shop and setting drawings, certificates, concrete mix designs, and required design computations must be approved by

the Contractor prior to submission to the Engineer. Shop drawings shall be submitted in sufficient number of copies to provide the Engineer with four copies and as many extra copies as may be desired by the Contractor, his Subcontractors, and/or Suppliers. In no case shall the number of copies submitted be less than six. Each transmittal shall be numbered consecutively in the space provided for "Transmittal No." This number will form a serial number for identifying each submittal. If initial submittal, indicate by checkmark; if resubmittal, indicate by inserting the transmittal number of the previous submission of the same item.

The review of shop drawings by the Engineer is for the purpose only of checking for general conformance with the design concept of the Project and for general compliance with the information given in the Contract Documents. Any action taken on shop drawings by the engineer does not relieve the Contractor of responsibility for proper dimensioning, for detailing of connections, and incorporating into the work satisfactory materials and equipment meeting the requirements of the Contract Documents. If errors in shop drawings are not detected in the Engineer's review, the Contractor is not relieved from the responsibility to comply with the Contract Documents and the Engineer's review shall never be construed as permitting the Contractor to proceed in error. It is understood that where a shop drawing is submitted for review for compliance with a performance specification, it is impossible to determine with certainty whether the item or process covered by the shop drawing will conform to the requirements of the Contract Documents. Regardless of any information contained or not contained in the shop drawings, the requirements of the Drawings and Specifications and other Contract Documents must be followed and are not waived or superseded in any way by the shop drawing review.

Shop drawings shall be submitted covering all equipment and structural details proposed by the Contractor and for such other items required by the Specifications or requested by the Engineer. Where shop drawings consist of special drawings prepared by the Contractor, his Subcontractor, or Suppliers, one reproducible paper sepia copy, and one print thereof may be submitted to the Engineer in lieu of the several copies specified above. The Contractor shall furnish additional copies of final corrected shop drawings upon request.

The Contractor will also submit to the Engineer for review, with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and deemed to have been approved by the Contractor, identified clearly as to material, manufacturer, pertinent catalog number, and the use for which intended.

At the time of each submission, the Contractor shall, in writing, call the Engineer's attention to any deviations that the shop drawings or sample may have from the requirements of the Contract Documents.

Any action taken on a separate item as such will not indicate that the same action applies to the assembly in which the item functions. The Contractor will make any corrections required by the Engineer, will return the required number of corrected copies of shop drawings, and resubmit new samples until the Engineer does not take exception to them. The Contractor shall direct specific attention in writing on resubmitted shop drawings to revisions other than the corrections called for by the Engineer on previous submissions. The Contractor's submission of shop drawings or samples shall constitute a representation to the Owner and Engineer that the Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalogue number and similar data, or he assumes full responsibility for doing so, and that he has reviewed or coordinated each shop drawing or sample with the requirements of the Work and the Contract Documents. The Contractor's submission of shop drawings shall constitute a representation to the Owner and the Engineer that the Contractor certified the items submitted meet the latest requirements of the Occupational Safety and Health Act of 1970, and current applicable revisions thereof; including any standards or regulations established by the U.S. Secretary of Labor in the administration of said act.

No Work requiring a shop drawing or sample submission shall be commenced until the submission has been reviewed by the Engineer. A copy of each reviewed shop drawing and each sample shall be kept in good order by the Contractor at the Site, and shall be available to the Engineer or Project representative.

The Engineer's review of shop drawings or samples shall not relieve the Contractor from his responsibility for any deviations from the requirements of the Contract Documents, unless the Contractor has, in writing by separate letter, called the Engineer's attention to such deviation at the

time of submission, and the Engineer has given written approval to the specific deviation. Nor shall any action taken by the Engineer relieve the Contractor from responsibility for errors or omissions in the shop drawings.

3.11 - MODIFIED DRAWINGS

The Contractor shall maintain, at the construction Site, one complete set of Drawings suitably marked to show all deviations from the original set of Drawings and other information, as specified. Supplementary sketches shall be included, if necessary, to clearly indicate all Work as constructed. All Work shall be clearly shown and the modified Drawings shall be satisfactory to the Engineer in order to ensure that adequate information is indicated to show the actual construction. One complete set of the modified Drawings shall be furnished to the Engineer, prior to submittal of the final Application for Payment. Failure of the Contractor to maintain an up-to-date set of modified Drawings on the Project Site shall be reason to withhold payments. All underground lines shall be referenced to surface landmarks so the exact location can be determined from the record drawings.

3.12 - INCIDENTAL WORK

All items and Work necessary to construct the Project in accordance with the Contract Documents, not called out on the Bid, such as, but not limited to, dewatering, removal and replacement of culverts, street signs, mail boxes, fences, steel and concrete posts, sodding, and gravel resurfacing are considered incidental to the Contract price; and the Contractor shall adjust his Bid accordingly.

3.13 - MOBILIZATION

This Work shall consist of preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies, and incidentals to the Project Site; and for all other work and operations which must be performed or costs incurred before beginning Work at the Project Site.

The Contractor must include all costs that he/she expects to incur for all movements of his/her equipment and personnel in the unit prices listed in the bid schedule. Additional payments will not be made should the Contractor elect to move his/her equipment and/or crew to another Project Site before the Contracted Work is complete or if the Contractor fails to adequately assess the actual cost of mobilization for the Contracted Work.

Mobilization is considered incidental work for this Project.

3.14 - FUNCTION OF COMPLETED PROJECT

The intent of the Contract Documents is to provide a Project that is complete without additional Work being performed thereon. It will be the Contractor's obligation to provide such a Project and to complete all grading, backfilling, raking, repairs, and associated work prior to the final acceptance.

3.15 - ONE-YEAR CORRECTION PERIOD

If, after approval of final payment, and prior to the expiration of one year after the date of substantial completion, or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, the Contractor will promptly, without cost to the Owner and in accordance with the Owner's written instructions, either correct such defective Work, or if any Work has been rejected by the Owner, remove it from the Site and replace it with non-defective Work.

It shall be the duty of the Contractor to notify the Owner, in writing, within 30 days prior to the expiration of the one-year period to make the final observation of the Work. Unless the Contractor shall furnish such notices, the obligation to maintain the Work shall continue in force until such notices have been furnished, the Work observed, and any required corrections made.

3.16 - ELEVENTH-MONTH OBSERVATION

It shall be the duty of the Contractor to notify the Owner and Engineer, in writing, of the expiration of 11 months from the date of completion or final acceptance of the Project, in order that an observation of the Work can be conducted.

At the time of the 11th-month observation, if there is any Work found to be defective, the Contractor will promptly, without cost to the Owner and with the Owner's written instructions, either correct such deficient Work; or if any Work has been rejected by the Owner, remove it from the Site and replace it with non-deficient Work.

Unless the Contractor shall furnish such notices, the obligation to conduct this observation shall continue, in force, until such notices have been furnished, the Work observed, and required corrections made.

3.17 - PROJECT SCHEDULING

It will be the responsibility of the Contractor to coordinate construction schedules with the Owner.

3.18 - EASEMENTS

The Contractor shall not enter private property, if any, within the Project limits for construction purposes until he has received official notification from the Owner that the necessary temporary or permanent easements have been obtained for the property in question. The Contractor shall hold and save the Owner and Engineer free and harmless from liability of any nature or kind arising from any use, trespass, or damage occasioned by his operation on premises of a third person, except where permanent facilities are shown on the Drawings or specified. All such areas so disturbed by the construction operation shall be restored by the Contractor to a condition equivalent to that existing prior to use by the Contractor.

3.19 - SERVICE FACILITIES

Water, electricity, compressed air, and other services shall be furnished by the Contractor to meet his own requirements.

3.20 - SITE GRADING

Finish grading of all areas within the Project, including excavated and filled sections and adjacent transition areas, shall be reasonably smooth and free from irregular surface changes and suitably prepared for paving, crushed rock surfacing, seeding or sodding where indicated on the Drawings or required in the Specifications.

Protect all newly graded areas from erosion or damage from other sources. Any settlement or erosion that occurs prior to acceptance of the Work shall be repaired without additional cost to the Owner.

3.21 - TRAFFIC AND PEDESTRIAN CONTROL - USE OF STREETS

The Contractor will be permitted to block off a portion of a paved drive on which work is in progress. The Contractor shall only block off section approved by Owner.

The Contractor shall erect and maintain such barricades, construction signs, detour signs, torches, red lanterns, traffic signs, flag persons, and guards as may be required by the Owner to protect persons from injury and to avoid property damage during construction. The Contractor shall notify the Owner at least 48 hours in advance of any planned drive closings and shall comply with all Owner requirements.

3.22 - AWARD OF CONTRACT

The Contractor shall note that the Owner reserves the right to award the contract to the Bidder whose Bid is the most advantageous to the Owner, based on the total aggregate bid for the Work, start date,

completion date, length of construction time, materials, and past performance on contracts with the Owner.

The Owner reserves the right to award any combination of base bid, alternates, and/or additions, if any.

3.23 - CLEANUP

At the completion of the Project, the Contractor shall remove all debris resulting from his construction Work on the Project, including the removal of all broken pipe, concrete, excess dirt, and other materials, leaving the Project Site in the same or better condition than existed prior to construction.

ARTICLE 4

P.C. CONCRETE PAVING AND SIDEWALK CONSTRUCTION

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ARTICLE 4

P.C. CONCRETE CONSTRUCTION

4.0 - DESCRIPTION OF THE WORK

The Work covered by this section of the Project Manual consists of furnishing all labor, equipment, materials, and performing all operations in connection with the excavations, grading, preparation of subgrade, and construction of air-entrained Portland Cement concrete in strict accordance with this section of the Specifications and the applicable Drawings. Concrete for the construction of all concrete shall be NDOR Type BX-3000.

4.1 - EXCAVATION AND EMBANKMENT

Excavation and embankment of every description, and of whatever substance encountered within the limits of this Project, shall be performed to the lines and grades indicated on the Drawings, or as directed by the Owner/Engineer. Except as otherwise permitted by the Owner/Engineer, all excavated areas shall be excavated in such a manner as would afford adequate drainage. No excavation material shall be considered to be property of the Contractor.

4.2 - SUBGRADE

The bottom of the excavation for the concrete shall be known as the subgrade and shall conform to the lines, grade, and cross section to be laid out by the Contractor.

All soft and yielding material, and other portions of the subgrade which will not compact readily when rolled or tamped, shall be removed as directed and replaced with suitable materials placed and compacted as specified herein.

The subgrade shall have uniform density and be compacted at, or slightly above, the optimum moisture content. The subgrade shall be thoroughly compacted with suitable equipment. The subgrade shall be finished in an acceptable condition at least one day in advance of the concrete construction.

Concrete shall not be placed upon a soft, spongy or frozen subgrade, or other subgrade, the stability of which is, in the opinion of the Owner/Engineer, unsuitable for the placement of concrete.

The subgrade shall be in a moist condition at the time any concrete is placed. It shall be thoroughly wetted a sufficient time in advance of the placing of the concrete to insure that there will be no puddles or pockets of mud when the concrete is placed, but shall not be allowed to dry out before the concrete is placed.

4.2.1 - Subgrade Compaction Requirements

The subgrade for cohesive soils with more than 10 percent passing the No. 200 sieve shall be compacted to a minimum of 95 percent, and not to exceed a maximum of 98 percent, of the maximum dry density of the standard proctor prior to the placement of any concrete. The maximum dry density and optimum moisture content of the subgrade shall be in accordance with ASTM D698, and in-place density tests shall be in accordance with ASTM D2167, D2922, or D4564.

Non-cohesive soils with less than 10 percent passing the No. 200 sieve shall be compacted by an approved method to at least 70 percent relative density. The compaction standard to be utilized to determine the relative density is ASTM D4253 and D4254.

Crushed aggregate and earthen mixture shall be compacted to 95 percent of the maximum dry density of the standard proctor or 70 percent of relative density of the mixture as determined by ASTM D2049.

The Contractor shall adjust the moisture content of the subgrade to not more than three percent above, or three percent below, the optimum moisture content.

4.2.2 - Protection of Subgrade

The finished subgrade shall be maintained in a smooth and compacted condition until the concrete has been placed.

4.3 - GRADING

4.3.1 - Overexcavation

The Contractor shall overexcavate, scarify, mix, and recompact a minimum of one foot below the bottom of the finished paving slab elevation. Contractor shall grade accordingly or remove, stockpile, and replace the top six inches. Compaction shall be in six-inch lifts.

This Work is considered incidental and shall be included in the appropriate paving Bid item.

4.3.2 - Final Grading

Contractor shall grade and backfill behind the concrete in a neat workmanlike manner. All excess concrete and debris shall be removed from the project. Material used for backfilling shall be suitable for seeding and shall not contain broken concrete, organic material, etc.

The Contractor shall not move heavy equipment on the new concrete within one week of placement without permission of the Owner/Engineer.

4.4 - MATERIALS

4.4.1 - Concrete

Concrete shall be composed of Portland Cement, aggregates, and water, and conform to the NDOR Standard Specifications for Highway Construction, 2007 English Edition, Section 1002. Air entrainment shall be provided by the addition of an air-entraining agent to Portland Cement. These materials shall be furnished only from sources of supply approved by the Engineer before shipments are started. The basis for approval of such sources shall be the ability to produce materials of the quality and in the quantity required.

4.4.2 - Portland Cement

Portland Cement shall conform to the NDOR Standard Specifications for Highway Construction, 2007 English Edition, Section 1004. Type I or II Portland Cement shall be used and conform to ASTM C150. Fly ash shall be Class C or F conforming to ASTM C618 and NDOR Standard Specifications for Highway Construction, 2007 English Edition, Section 1008.

4.4.3 - Air-Entraining Agent

Air-entraining admixtures shall conform to the requirements of ASTM C260 and NDOR Standard Specifications for Highway Construction, 2007 English Edition, Section 1007.

4.4.4 - Aggregates

All aggregates shall meet the NDOR Standard Specifications for Highway Construction, 2007 English Edition, Section 1033. Gradation limits of final aggregate, Class B, shall meet Table 1033.02A; and coarse aggregate, Class E, shall meet Table 1033.03A. Aggregates with adversely reactive constituents shall not be used.

The aggregate (both fine and coarse) shall be handled so that its moisture content and gradation is reasonably uniform and does not change appreciably from batch to batch or hour to hour.

No aggregates shall be used which have become mixed with foreign material while in storage. Frozen aggregates, or aggregates containing frozen lumps, shall be thawed before use.

4.4.5 - Water

Water used in mixing or curing concrete shall be clean and free from injurious amounts of oil, acids, salt, alkali, organic materials, or other substances harmful to concrete. Water for concrete shall meet NDOR Standard Specifications for Highway Construction, 2007 English Edition, Section 1005. Water from public supplies, or which is suitable for drinking, is satisfactory.

4.4.6 - Reinforcing Steel

Reinforcing steel, if specified, shall be deformed Grade 40 billet steel and conform to the NDOR Standard Specifications for Highway Construction, 2007 English Edition, Section 1020, and the latest ASTM Designations as follows:

Bars and rods	ASTM Designation A615
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4.4.7 - Approval of Concrete Mixes

Prior to construction, the Contractor shall submit and have tested by a reputable testing laboratory all materials proposed to be used under these Specifications. Results of the tests shall be submitted to the Engineer prior to placement. No material shall be used until it has been approved by the Engineer in writing. The Contractor shall acquire from the testing laboratory its recommended job mix and aggregate gradation curve, based on materials submitted, and submit them to the Engineer for approval prior to construction. The costs of these tests and job mix designs shall be borne by the Contractor. The Contractor shall furnish the Engineer with the ready-mix plant and aggregate source prior to construction.

Mix design furnished and certified by the ready-mix plant shall be acceptable in lieu of the testing lab. The mix design by the concrete supplier shall include a signed statement that it meets the specifications.

4.5 - JOINTS

All joints shall be constructed and spaced as shown on the Drawings. Details of joints are included in the Drawings.

4.5.1 - Expansion Joints

Expansion joints shall be 1/2 inch from the bottom of the slab to 1/2 inch from the top of the slab at the width as indicated on the Drawings. Expansion joints shall be premolded fiber conforming to ASTM D544 and AASHTO M 33, M 153 Type 3. Expansion joints for sidewalks shall be non-extruding, preformed joint fillers similar to Soneborn, Sonoflex F, foam expansion joint filler, or approved equal. Closed cell polyethylene foam backer rods may be utilized in sidewalk joint construction.

The top 1/2 inch shall be filled with sealing compound. Expansion joints shall be placed at locations noted on the Drawings. Expansion joints are considered incidental Work and shall be included in the Bid.

4.5.2 - Contraction Joints or Construction Joints

Joints shall be either sawed or hand-tooled and cut using a straight edge and trowel while the concrete is still plastic. Joints shall be cut to a depth of 1/4 of the slab thickness and rounded and smoothed with a joint tool or edger. Joints that result in premature and uncontrolled cracking shall be revised immediately by adjusting the time interval between the placing of the concrete and the cutting of the joints. The longitudinal and transverse joints shall be filled with sealing compound.

4.5.3 - Joint Sealing Compound

Sealing material for filling and leveling of all sidewalk expansion joints shall be Sika Corporation, Sikaflex-1C, self leveling, polyurethane elastomeric sealant, or approved equal. The sealant shall meet ASTM C920. The sealant shall dry in a color as approved by the Owner.

4.6 - MIXING AND PLACING

4.6.1 - Batching

Measurement and batching of cement and aggregates shall be by weight on scales accurate to within one-half of one percent. One sack of cement shall be considered to weigh 94 pounds net. Bulk cement and cement from fractional sacks shall be weighed.

4.6.2 - Proportioning Concrete

Proportions of cement, water, and aggregates shall conform to the standard proportions for pavement concrete of the Department of Roads BD-3000.

All concrete shall be air-entrained and the volume of air in the freshly mixed concrete shall be obtained by using an air-entraining admixture. For a method of measuring air content see Section 4.6.7. Air-entrained concrete shall have a total air content of 5 to 7-1/2 percent by volume of the plastic concreting, including natural entrained air found in Portland Cement.

The minimum cement and fly ash content shall not be less than six sacks (94 pounds per sack) per cubic yard of concrete. The maximum fly ash content shall be 98 pounds. The maximum water/cementitious ratio shall be 0.48. The Contractor is responsible to adjust the water/cementitious ratio so that the concrete supplied achieves the required compression strength without exceeding the maximum water/cementitious ratio.

4.6.3 - Compression Tests

Compression test specimens shall be made in the field, as required by the Owner/Engineer and in accordance with ASTM Designation C31 and cured in accordance with AASHTO T 23. When tested in accordance with ASTM C39 and AASHTO T 22, assumed minimum compressive strength shall be 7 days, 2,100 psi; 28 days, 3,000 psi for concrete.

There shall be a minimum of three cylinders taken each day that concrete is placed up to 1,000 square yards in which an additional three cylinders shall be taken for each additional 1,000 square yards placed. Cylinders shall be taken on the first load and be clearly marked as to location and Project. Cylinders shall be made in accordance with ACI and NDOR Specifications. One cylinder shall be broken at 7 days, the second at 28 days, and the third as a spare for retest.

All compression tests shall indicate location of concrete poured. All compression test results shall be signed by a professional Engineer of the State of Nebraska.

Approval of pay requests is subject to receipt and acceptance of all testing information.

4.6.4 - Consistency

The slump of the concrete shall be from one to three inches. The consistency shall be measured as described in the current ASTM Standard Method of Slump Test for Consistency of Portland Cement Concrete (Designation C143), or the method of test for ball penetration for Portland Cement Concrete, ASTM Designation 360.

4.6.5 - Workability

Concrete shall at all times be of such consistency that it can be worked into corners and angles of the forms and around joints, dowels, and tie bars by the construction methods used, without excessive spading, segregation, or undue water or laitance on the surface.

4.6.6 - Ready-Mixed Concrete

Ready-mixed concrete shall be mixed and transported in accordance with the current ASTM Specification for Ready-Mixed Concrete (Designation C94). Any concrete which is not plastic and workable without adding water when it reaches the subgrade shall be rejected.

4.6.7 - Measuring of Air Content

The air content of freshly mixed air-entrained concrete shall be checked at least three times daily. Concrete with air contents above or below the amount specified in Section 4.6.2 shall be corrected by adjustments in the mix design or quantities of air-entraining admixture being used.

The air content shall be measured in accordance with NDOR T121 or T152 and ASTM C231 or ASTM C173.

4.7 - FORMS AND EQUIPMENT

4.7.1 - Forms

Forms shall be made of metal or wood and shall have a depth equal to, or greater than, the prescribed edge thickness of the concrete slab. Each section of form shall be straight, clean, and free from bends or warps. The maximum deviation of the top surface of any section shall not exceed 1/8 inch, or the inside face not more than 1/4 inch from a straight line. The method of connection between sections shall be such that the joint thus formed shall be free from movement in any direction. Forms shall be of such cross section and strength and so secured as to resist the pressure of the concrete when placed, and the impact and vibration of any equipment which they support, without springing or settlement.

4.7.2 - Setting Forms

The subgrade under the forms shall be compacted and cut to grade so that the form, when set, will be uniformly supported for its entire length at the specified elevation. Forms shall be jointed neatly and in such a manner that the joints are free from play or movement in any direction. Forms shall be set, as herein specified, for at least one day's construction ahead of the actual placing of the concrete. The supply of forms shall be sufficient to permit their remaining in place for at least 12 hours after the concrete has been placed. All forms shall be cleaned and oiled each time they are used.

4.7.3 - Grade and Alignment

The concrete shall be mixed in quantities required for immediate use and shall be deposited on the subgrade to the required depth and width. The concrete shall be placed as uniformly as possible in order to minimize the amount of additional spreading necessary.

While being placed, the concrete shall be spaded or vibrated and compacted with suitable tools so that the formation of voids or honeycomb pockets is prevented. The concrete shall be especially well spaded or vibrated and tamped against the forms and along all joints.

No concrete shall be placed around structures until they have been brought to the required grade and alignment.

4.7.4 - Cold Weather Concreting

Except by specific written authorization, concreting shall cease when the descending air temperature in the shade and away from artificial heat falls below 40 degrees F. It shall not be resumed until the ascending air temperature in the shade and away from artificial heat rises to 35 degrees F and with a favorable weather forecast.

4.8 - CONSOLIDATING AND FINISHING

The concrete shall be struck off and consolidated with a mechanical finishing machine or by hand finishing methods. If requested by the Owner, the Contractor shall construct a minimum of three two-foot by two-foot concrete test panels with different finishes for the Owner to determine the type of desired finish. The test panel and finishing is considered incidental work and shall be located at an approved Site.

4.8.1 - Final Surface Finish

The final surface of the concrete shall have a uniform texture free from excessive harshness. The Owner may require changes in the final finishing procedure, as required, to produce the desired final surface texture.

4.9 - CURING

Concrete shall be cured by protecting it against loss of moisture, rapid temperature change, and from rain, flowing water, and mechanical injury for a period of not less than five days from the beginning of the curing operation. Moist curing, polyethylene sheeting, liquid membrane compounds, or a combination thereof, may be used for curing, as approved by the Owner/Engineer. Curing method shall be suitable for colored concrete and texture.

Immediately after the finishing operations have been completed, the entire surface shall be covered by the curing medium, which is applicable to local conditions and approved by the Owner/Engineer. The edge of the concrete slabs exposed by the removal of forms shall be protected immediately to provide these surfaces with continuous curing treatment equal to the method selected for curing the slab surface and to prevent injury to concrete edges.

The use of a covering material which contains or becomes contaminated with tannic or any substance considered detrimental to Portland Cement will not be permitted.

The initial curing medium shall be effective and shall be applied so as to prevent checking, cracking, and the appearance of dry spots in the surface of the concrete. The Contractor shall have the equipment needed for adequate curing at hand and ready to install before actual concrete placement begins. Failure to provide sufficient cover material of the type selected, failure to maintain saturation for the entire curing period in the moist-curing methods, lack of water to adequately care for both curing and other requirements, or other failures to comply with requirements shall be cause for immediate suspension of concreting operations.

4.9.1 - Moist Curing

Moist curing shall be accomplished by covering of burlap, cotton mats, or other approved fabric mat used singly or in combination.

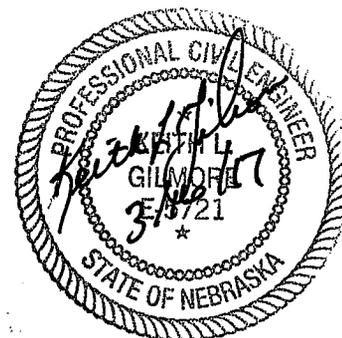
Curing mats shall be thoroughly wet when applied and kept continuously wet and in intimate contact with the pavement surface for the duration of the moist curing period. Other fabric mats shall conform in design and shall provide a curing medium at least equal to cotton mats. Cotton mats, other fabric mats, and burlap strips shall be furnished in the widths or lengths, after shrinkage, required to cover the entire width and edges of the concrete. Mats or burlaps shall be lapped at joints between adjacent sheets to prevent drying of this location. Moist curing, when used as initial curing, shall be continued for not less than 24 hours.

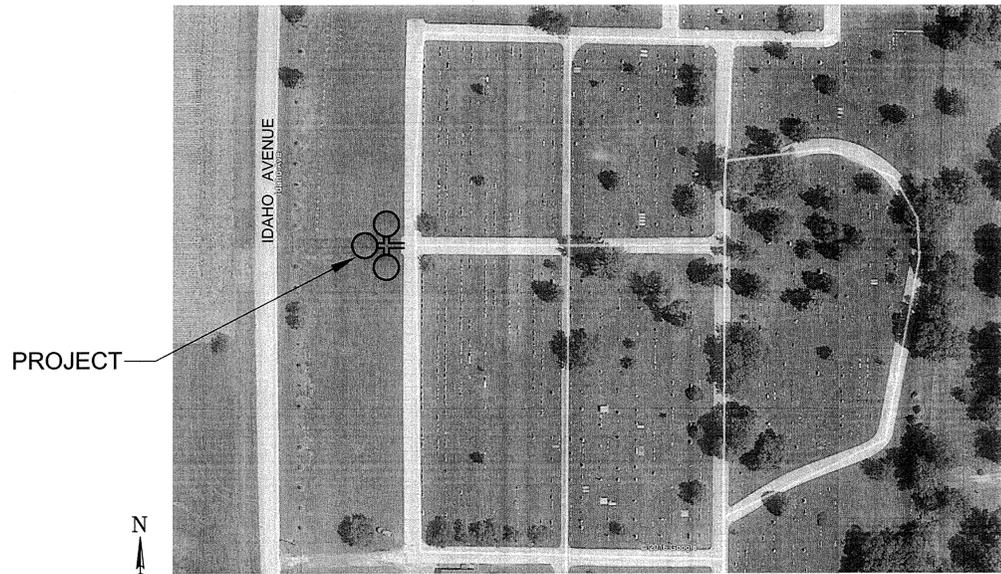
4.9.2 - Liquid Membrane Curing Compound

Curing and sealing compound shall be "LUMISEAL PLUS" as manufactured by Laticrete International, Inc. Coverage shall be 1 gallon per 300 sq. feet for decorative concrete. Contractor shall follow manufacturers recommendation's for application.

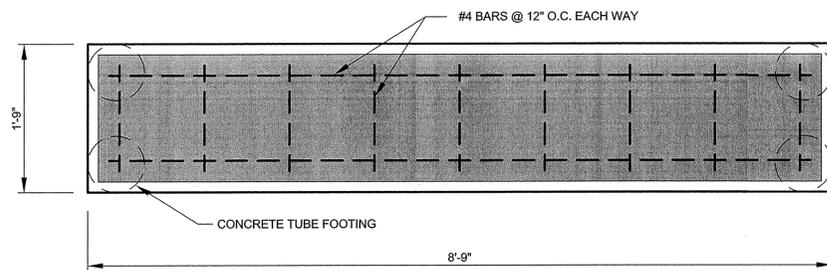
4.10 – CONCRETE COLOR AND TEXTURE/STAMPING

Contractor shall note that the concrete for all flat work shall be colored and textured/stamped as approved by the Owner. The Owner desires that the finished color and texture/stamping be similar to concrete work located at the fountain in the city park behind the City Hall. The Contactor shall provide test panels to match the desired color and stamping if requested by the Owner.

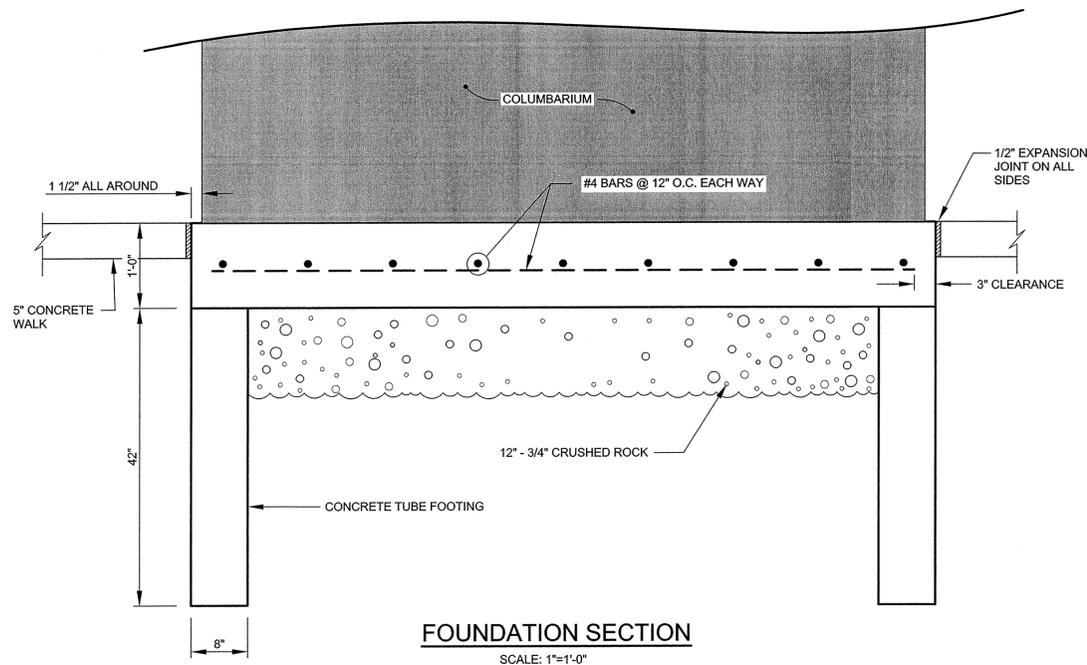




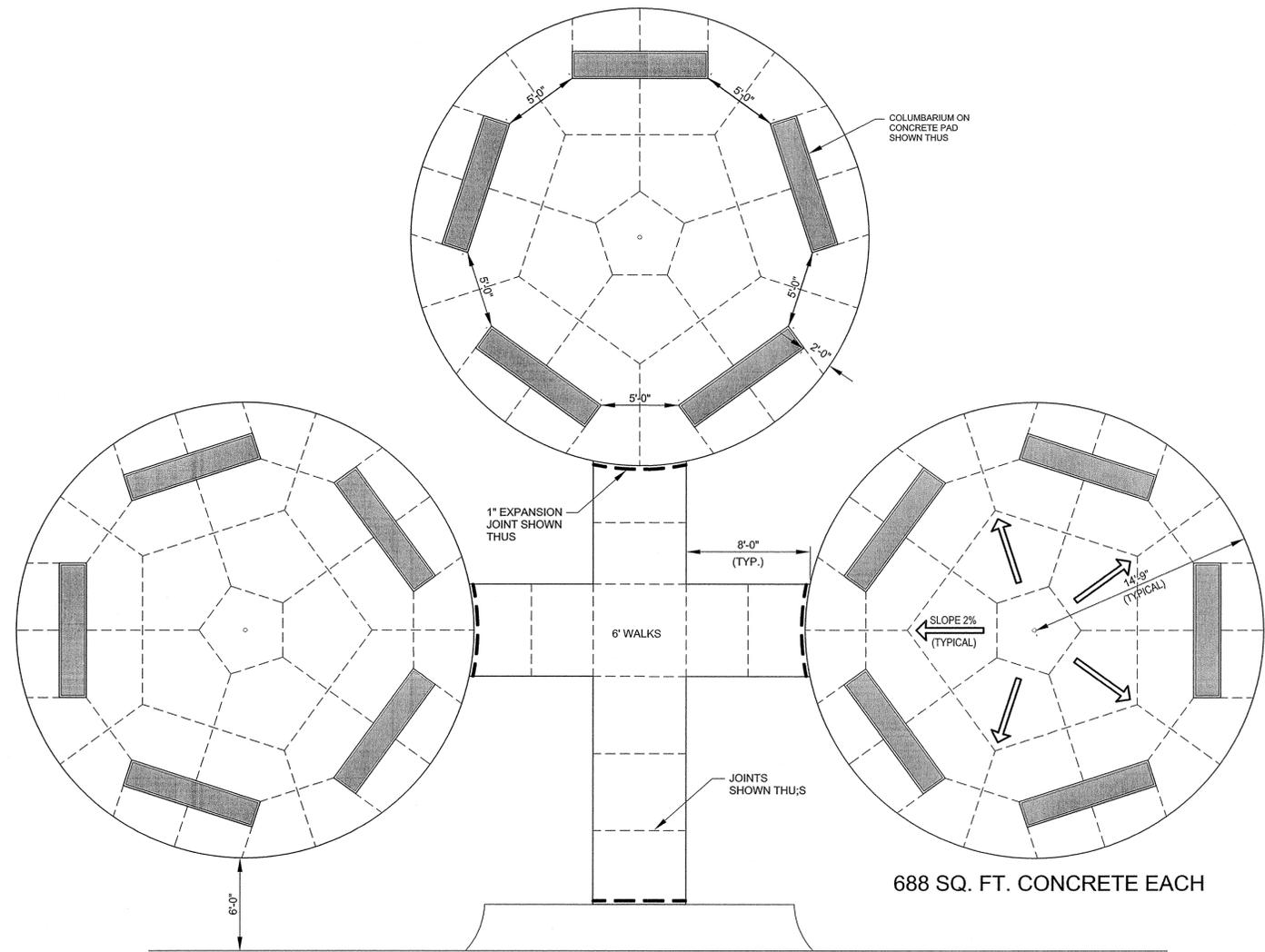
LOCATION MAP
SCALE: 1"=100'



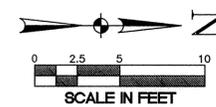
PLAN



FOUNDATION SECTION
SCALE: 1"=1'-0"



ROAD



PLAN
SCALE: 1"=5'

NOTES

1. THE CONTRACTOR SHALL VERIFY THE LOCATION AND ELEVATION OF ALL PRIVATE AND PUBLIC UTILITIES PRIOR TO COMMENCING CONSTRUCTION WORK. CONTRACTOR SHALL NOTIFY ALL UTILITIES VIA THE ONE-CALL SYSTEM IN ACCORDANCE WITH STATE REGULATIONS.
2. ALL GEOLOGICAL INFORMATION AND ALL TESTING IS THE RESPONSIBILITY OF THE CONTRACTOR.
3. COPIES OF ALL TESTS AND REPORTS SHALL BE FORWARDED TO THE ENGINEER IMMEDIATELY FOR REVIEW. APPROVAL OF PAY REQUESTS IS SUBJECT TO RECEIPT OF SAID TESTING RESULTS.
4. CONTRACTOR IS RESPONSIBLE FOR ALL TRAFFIC AND PEDESTRIAN CONTROL, INCLUDING, BUT NOT LIMITED TO, SIGNAGE, BARRICADES, CONSTRUCTION TAPE, AND RELATED ITEMS.
5. EROSION AND SEDIMENT CONTROL ARE THE RESPONSIBILITY OF THE CONTRACTOR AND SHALL BE INCLUDED IN THE BID.
6. EXCESS EARTHEN MATERIAL, IF ANY, SHALL BE HAULED AND PROPERLY DISPOSED OF BY THE CONTRACTOR. EXCESS MATERIALS OTHER THAN EARTH SHALL BE PROPERLY DISPOSED OF BY THE CONTRACTOR.
7. THE CONTRACTOR SHALL FURNISH ANY FILL AND BACKFILL MATERIAL REQUIRED.
8. ALL WORK REQUIRED TO BE PERFORMED IN ORDER TO CONSTRUCT THE PROJECT, WHICH IS NOT SPECIFICALLY DESIGNATED ON A BID ITEM IN THE BID, IS CONSIDERED INCIDENTAL WORK.

NOTES:

- WALK SHALL BE MINIMUM 5" THICK NDOR BX-3000. WALK SHALL BE STONE TEXTURE PATTERN, COLOR AND PATTERN TO BE APPROVED BY CITY.
- COLUMBARIUM PADS SHALL BE LEVEL. WALKS SHALL HAVE A MAXIMUM SLOPE OF 2%.
- PROVIDE #4 REBAR @ 30" O.C. EACH WAY FOR CONCRETE WALKS AND CONCRETE PAD.
- JOINT SPACING SHALL BE MAXIMUM 6 FT. OR AS APPROVED BY CITY.
- CONTRACTOR SHALL BE RESPONSIBLE FOR LAYOUT OF CONCRETE WALK AND PADS. OWNER SHALL APPROVE LAYOUT PRIOR TO BEGINNING CONSTRUCTION.
- ALL CIRCLES SHALL SLOPE FROM CENTER TO EDGE AT 2%.



ENGINEER'S CERTIFICATE

I, Keith L. Gilmore, hereby certify that this document was prepared by me or under my direct supervision, and that I am a duly registered professional engineer under the laws of the State of Nebraska.

Keith L. Gilmore
Keith L. Gilmore, Neb., PE No. E-5721



Diggers Hotline of Nebraska 1-800-331-5666
 Keith L. Gilmore
 E-5721
 PROFESSIONAL CIVIL ENGINEER
 STATE OF NEBRASKA

GILMORE & ASSOCIATES INC.
 Engineers-Surveyors
 Phone (402) 644-2800
 Fax (402) 644-2800
 Box 505 2070 33rd Ave
 Columbus, Nebraska 68502-0505

**COLUMBARIUM CONCRETE WORK
 CRETE, NEBRASKA
 PLAN & DETAILS**

DRN BY RTK
 DATE 3/13/2017
 SCALE AS SHOWN
 PROJ. 226.333
 F.B.
 SHEET

1 of 1

ORDINANCE NO. 2000

AN ORDINANCE OF THE CITY OF CRETE, NEBRASKA, TO CHANGE THE ZONING OF CERTAIN PROPERTY LOCATED WITHIN THE ZONING JURISDICTION OF THE CITY OF CRETE, NEBRASKA, FROM CENTRAL COMMERCIAL (C-1) TO HEAVY INDUSTRIAL (I-2); TO CHANGE THE OFFICIAL ZONING MAP TO SHOW THE CHANGE IN ZONE; PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; PROVIDING FOR REPEAL OF ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR A TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRETE, NEBRASKA:

Section 1. That the zoning district of the property listed below, located within the City of Crete, be changed from Central Commercial District (C-1) to Heavy Industrial District (I-2), to-wit:

All of Lots 1-15, All of Lots 31-41, North 14' of Lot 16, North 6' of Lot 30, Abutting vacated alley, Vacated South Railway Street abutting Lots 1 & 40; All in Block 121, Original Town, Crete, Saline County, Nebraska

Section 2. That the Official Zoning Map of the City of Crete be amended to note the change in zoning.

Section 3. That all ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4. That this ordinance shall take effect and be in full force and effect from and after its passage and publication in pamphlet form as provided by law.

PASSED AND APPROVED this _____ day of _____, 2017.

ATTEST:

MAYOR

CITY CLERK

(SEAL)

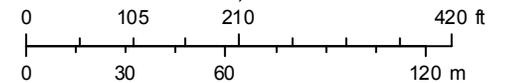
Block 121 Zoning

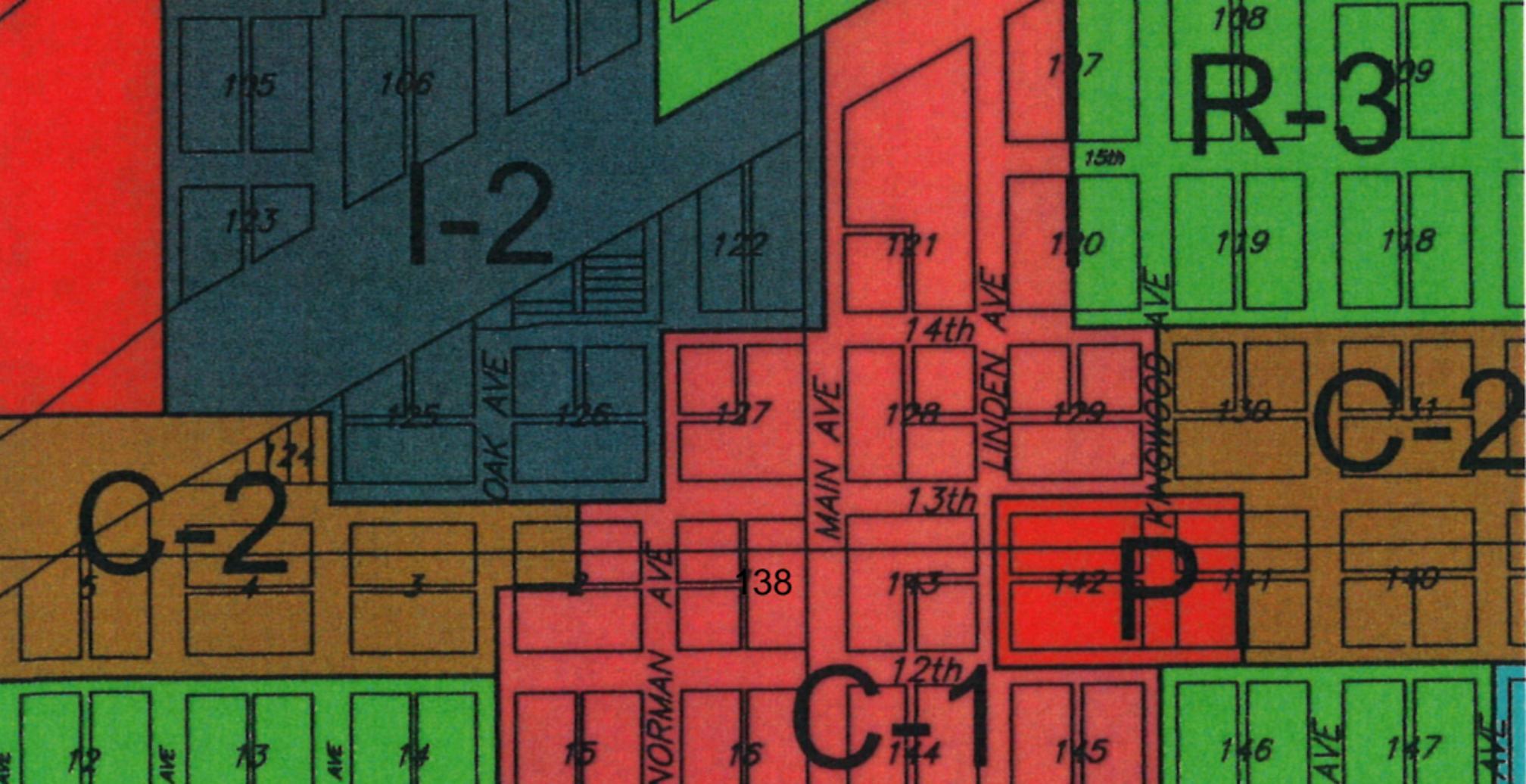


December 14, 2016

 Parcels

1:2,257





105

106

123

I-2

122

121

107

108

R-3

109

120

119

118

15th

14th

OAK AVE

125

126

127

128

129

130

C-2

C-2

124

5

4

3

2

138

135

142

141

140

P

13th

C-1

12th

12

AVE

13

AVE

14

15

NORMAN AVE

16

144

145

146

AVE

147

AVE



March 20, 2017

City of Crete
Attn: Tom Ourada
243 E. 13th Street
PO Box 86
Crete, NE 68333

RE: Crete, Nebraska
Braden Substation, New Breakers and Protective Relays
JEO Project No. 160054

Dear Tom:

JEO Consulting Group, Inc. (JEO) is pleased to submit this cover letter concerning bids received for the '2016 Crete Braden Substation New Breakers' project for the City of Crete, Nebraska (City).

On March 15, 2017, the City received three bids for the '2016 Crete Braden Substation New Breakers' project. I have enclosed the Bid Tab for your review. The bids ranged from \$439,350.00 to \$477,616.22 and the apparent low bidder was Harold K. Scholz Co. (Scholz) of Ralston, NE with a bid of \$439,350. The other two bids received were from IES Commercial, Inc. and Watts Electric Company. Scholz has a start date of May 15, 2017 and the project is to be substantially completed by October 24, 2017. The substantial completion date is dependent upon the City's electrical loading and scheduling of work will be contingent upon the City's ability to serve the load(s) from other substation(s). The bid documents are in order and we found no irregularities to deem their bid non-responsive. The Engineer's Opinion of Probable Cost for this project was \$470,000-\$515,000.

Harold K. Scholz Co. is a reputable contractor and JEO has worked with them on multiple substation projects with similar scopes of work. We recommend award of this project to Harold K. Scholz Co. If approved by the City Council, JEO will send the contractual document(s) to Scholz to be executed. Scholz will need to submit the necessary bonding and insurance for review by JEO prior to submitting to the City.

If you have any questions and/or concerns, please do not hesitate to contact me.

Respectfully submitted,

Matt E. Kalin, PE
Project Manager

MEK:skw
Enclosure



Bid Tab

PROJECT | 2016 Crete Braden Substation New Breakers

JEO PROJECT NO. | 160054

LOCATION | Crete, Nebraska

LETTING | March 15, 2017 @ 2:00 PM

OPINION OF PROBABLE COST | \$470,000 - \$515,000

Bidder	Group A	Start Date
Harold K. Scholz Co. Ralston, NE	\$439,350.00	5/15/2017
IESCI Holdrege, NE	\$476,842.45	8/7/2017
Watts Electric Co. Waverly, NE	\$477,616.22	8/1/2017



Tab Sheet

PROJECT | 2016 Crete Braden Substation New Breakers

JEO PROJECT NO. | 160054

LOCATION | Crete, Nebraska

Item	Qty.	Unit	Description	Harold K. Scholz Co.		IES Commercial, Inc.		Watts Electric Company	
				Unit Price	Total	Unit	Total	Unit	Total
GROUP A									
1	1	LS	Concrete Work		\$13,793.60		\$12,163.00		\$3,585.00
2	6	EA	600 Amp Outdoor Circuit Breaker	\$18,810.29	\$112,861.74	\$15,611.00	\$93,666.00	\$17,600.00	\$105,600.00
3	2	EA	1200 Amp Outdoor Circuit Breaker	\$18,688.50	\$37,377.00	\$15,785.00	\$31,570.00	\$19,512.50	\$39,025.00
4	1	EA	2000 Amp Outdoor Circuit Breaker	\$22,369.50	\$22,369.50	\$18,985.00	\$18,985.00	\$25,073.50	\$25,073.50
5	1	LS	Substation Electrical		\$106,538.71		\$125,237.65		\$136,375.50
6	1	LS	Control Cabling		\$57,998.00		\$70,834.00		\$45,610.00
7	8	EA	Feeder Management Relay	\$2,509.84	\$20,078.72	\$2,534.70	\$20,277.60	\$2,541.00	\$20,328.00
8	1	EA	Generator Relay	\$4,038.76	\$4,038.76	\$6,956.40	\$6,956.40	\$6,963.00	\$6,963.00
9	1	LS	Control Switchboard		\$38,161.36		\$44,563.80		\$48,854.00
10	1	LS	Demolition / Retirement		\$8,322.75		\$52,589.00		\$28,478.75
SUBTOTAL GROUP A					\$421,540.14		\$476,842.45		\$459,892.75
SALES TAX FOR MATERIALS & EQUIPMENT ON GROUP A @ 7% (SHOWN SEPARATELY BY OPTION 1 CONTRACTORS ONLY)					\$17,809.86				\$17,723.47
TOTAL GROUP A					\$439,350.00		\$476,842.45		\$477,616.22