

RESOLUTION 20-49

**A RESOLUTION TO CLOSE OUT THE CROSSINGS NORTH BRIDGE PROJECT
AND WAIVE CLAIM OF LIQUIDATED DAMAGES**

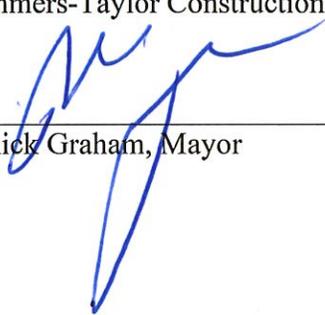
WHEREAS, the Crossings North Bridge Project was awarded to Summers-Taylor Construction by Resolution 19-27 with an original completion date of December 5, 2019; and

WHEREAS, the project was modified for cost savings by Resolution 19-175 which also shortened the completion date to November 30, 2019; and

WHEREAS, the construction was completed and bridge was opened on December 6, 2019, six (6) days past the agreed upon completion date resulting in the potential of \$3,000 in liquidated damages; and

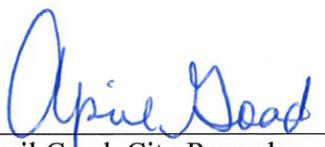
WHEREAS, Dempsey, Dilling & Associates determined there were thirteen (13) rainout days that should be considered as an extension to the proposed November 30, 2019 closeout date thus indicating the project was completed in a timely manner.

NOW, THEREFORE BE IT RESOLVED, That the Board of Mayor and Aldermen of the City of Spring Hill close out the contract with Summers-Taylor Construction and waive all claim of liquidated damages.



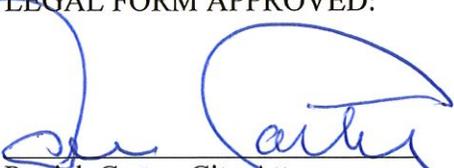
Rick Graham, Mayor

ATTEST:



April Goad, City Recorder

LEGAL FORM APPROVED:



Patrick Carter, City Attorney



REQUEST: *Crossings North Bridge Project Completion*

SUBMITTED BY: Victor Lay, City Administrator

DATE: April 3, 2020

ATTACHMENTS:

Resolution 19-27
Resolution 19-175

PURPOSE:

To close out the Crossings North Bridge project and to determine whether or not liquidated damages in amount of \$3,000.00 should be assessed.

BACKGROUND:

The Crossings North Bridge Project was awarded to Summers-Taylor Construction via Resolution 19-27 with an original completion date of December 5, 2019. However, the project was modified for cost savings by Resolution 19-175 which also resulted in a shortened proposed completion date of November 30, 2019.

The construction was completed and opened on Friday, December 6, 2019, six (6) days beyond the contract that have the potential for liquidated damages of \$500 per day for a total of \$3,000. However, according to Dempsey, Dilling and Associates who performed the daily inspections, there were 13 rainout days that should offset the contract time limit. The contractor performed very well, otherwise and completed the project on budget.

STAFF RECOMMENDATION:

It is staff's recommendation, to follow the engineer's assessment and NOT assess liquated damages and to complete the close out of this project.

RESOLUTION 19-27

A RESOLUTION TO AWARD BID AND AUTHORIZE EXECUTION OF AGREEMENT BETWEEN CITY OF SPRING HILL AND SUMMERS TAYLOR, INC. FOR CONSTRUCTION OF CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK

WHEREAS, the City of Spring Hill Board of Mayor and Aldermen desires to construct the Crossings Circle Bridge at McCormick Creek project; and

WHEREAS, the City of Spring Hill published a Request for Proposals for the Crossings Circle Bridge at McCormick Creek project resulting in receiving bid responses from eight contractors; and

WHEREAS, Dempsey Dilling and Associates P.C. as part of their professional services for the project completed a review of the bids submitted and the apparent low bidder is Summers Taylor, Inc. in the amount of \$1,870,000.00 (base bid only); and

WHEREAS, Dempsey Dilling and Associates P.C. as part of their professional services for the project performed reference due diligence affirming their experience working with Summers Taylor on various bridge projects of comparable scope and cost; and

WHEREAS, in addition to the base bid the bidding documents included two (2) additive alternates and one deductive alternate for waterline work across the bridge summarized as follows:

Additive Alternate No. 1 – Includes the necessary waterline relocation work for construction of the bridge; and installation of casing pipes and a hanger system for the future installation of a 12-inch waterline. The additive alternate price from Summers Taylor for this work is \$38,000.00.

Additive Alternate No. 2 – Includes the additional work necessary for the addition of the waterline across the bridge and connections on both sides. The additive alternate price from Summers Taylor for this work is \$103,000.00

Deductive Alternate No. 1 – Is for the elimination of work from Additive No. 1 which would no longer be necessary if both Additive Alternates 1 and 2 are approved. The deductive price for this work is \$2,376.00

WHEREAS, as a result of the bid received from Summers Taylor, the following three (3) options may be considered by the Board of Mayor and Aldermen for the construction of the Crossings Circle Bridge at McCormick Creek and associated water line improvements:

Option 1. Proceed with just the base bid with no hanger system or waterline at a cost of \$1,870,000.00.

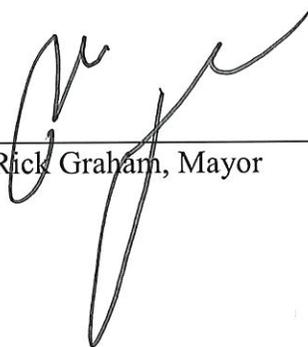
Option 2. Proceed with the base bid and Additive Alternate 1 for the installation of the hanger system only across the bridge and casing pipes under the approach slabs at a total cost of \$1,908,000.00.

Option 3. Proceed with the base bid and Additive Alternates 1 and 2 and Deductive Alternate 1 for the complete installation of bridge, hanger system, casing pipes and waterline connection at a total cost of \$2,008,624.00.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Mayor and Aldermen of the City of Spring Hill:

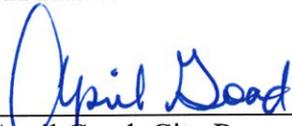
1. Award the bid to Summers Taylor Inc. for Option 3 as outlined above and referenced in attachments herein for the complete installation of the bridge, hanger system, casing pipes and waterline connection at a total cost of \$2,008,624.00.
2. The cost for the waterline improvement totaling \$138,624 to be funded from Water Development Fee fund.
3. Authorizes the Mayor to execute the attached Agreement and Terms and Conditions as provided in the Project Manual utilized for bidding purposes including the technical specifications that were also a part of the Project Manual.

Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee on this 19th day of February, 2019.



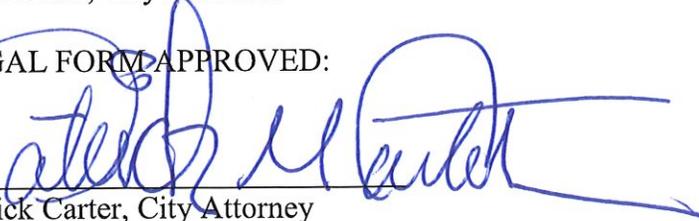
Rick Graham, Mayor

ATTEST:



April Goad, City Recorder

LEGAL FORM APPROVED:



Patrick Carter, City Attorney



REQUEST: Approval of Resolution 19-27

SUBMITTED BY: Chuck Downham, Assistant City Administrator

DATE: February 4, 2019

RE: Resolution to Award Bid and Authorize Execution of Agreement Between City and Summers Taylor Inc. for Construction of Crossings Circle Bridge at McCormick Creek

ATTACHMENTS: Resolution 19-27 and supporting documentation

PURPOSE:

To approve Resolution 19-27 to award bid to Summers Taylor, Inc. and authorize execution of Agreement between City of Spring Hill and Summers Taylor, Inc. for the construction of Crossings Circle Bridge at McCormick Creek and related waterline improvements.

BACKGROUND:

The Crossings Circle North Bridge Project has been a high priority project for the City for several years since the development of The Crossings. The Board approved a contract with Dempsey Dilling and Associates to prepare construction plans and assist with the bid/procurement process. In addition, the Board approved an amendment to the contract to provide additional design services related to the installation of a 12-inch water line to improve water flow in the area of The Crossings. Dempsey Dilling completed design for the project (see attached site plan documents illustrating the bridge and waterline improvements) and was authorized to initiate the bid process following an amendment to the City's budget to provide a budget appropriation of \$2M for construction and an additional \$200K for CEI services.

The City advertised a Request for Proposal for qualified contractors to submit bids for the bridge project along with an add alternates for the installation of hangers and the installation of the waterline and related improvements along with any corresponding bid deductions if the two add alternates were combined. The City received response from 8 contractors (see attached). The apparent low bidder was Summers Taylor, Inc. from Elizabethton, TN with a base bid of \$1,870,000 (see attached). The bids were reviewed in detail and a Letter of Recommendation was prepared by Dempsey Dilling outlining their recommendation on the bid results (attached). Summers Taylor also provided a bid on the two alternates and deductive alternate that are summarized in the Financial Impact section below.

While the alternate waterline improvement project will improve water pressure marginally, the more noteworthy benefit of the project will be in the form of water flow which is an important design and system capacity consideration with regard to fire protection for existing and future development in the vicinity of the project. Although the landowners involved in the remaining portion of the parcels adjoining The Crossings have not taken the initiative to master plan their remaining parcels, it is anticipated based upon current zoning that the property will develop intensively in retail and office land uses as well as possible mixed use and residential uses all of which will require fire protection and associated fire flows. The cost associated with the waterline improvement is a total of \$138,624. The City assesses a water development fee on all new development including nearby parcels that could be utilized as a tool for cost recovery of this investment as the remaining property adjoining The Crossings is built out. There may also be opportunity to assign specific water system investment costs to remaining development based upon development agreements negotiated between the City and developers for development proposed on remaining nearby property. If the City foregoes construction of the waterline improvement at this time, the cost for the project is anticipated to increase substantially which will make full cost recovery a greater challenge in future years.

FINANCIAL IMPACT:

The apparent low bidder is Summers Taylor, Inc. with a base bid only of \$1,870,000. In addition to the base bid the bidding documents included two (2) additive alternates and one deductive alternate for waterline work across the bridge summarized as follows:

Additive Alternate No. 1 – Includes the necessary waterline relocation work for construction of the bridge; and installation of casing pipes and a hanger system for the future installation of a 12-inch waterline. The additive alternate price from Summers Taylor for this work is \$38,000.00.

Additive Alternate No. 2 – Includes the additional work necessary for the addition of the waterline across the bridge and connections on both sides. The additive alternate price from Summers Taylor for this work is \$103,000.00

Deductive Alternate No. 1 – Is for the elimination of work from Additive No. 1 which would no longer be necessary if both Additive Alternates 1 and 2 are approved. The deductive price for this work is \$2,376.00

As a result of the bid received from Summers Taylor, Inc., the following three (3) options may be considered by the Board of Mayor and Aldermen for the construction of the Crossings Circle Bridge at McCormick Creek and associated water line improvements:

- Option 1.** Proceed with just the base bid with no hanger system or waterline at a cost of \$1,870,000.00.
- Option 2.** Proceed with the base bid and Additive Alternate 1 for the installation of the hanger system only across the bridge and casing pipes under the approach slabs at a total cost of \$1,908,000.00.
- Option 3.** Proceed with the base bid and Additive Alternates 1 and 2 and Deductive Alternate 1 for the complete installation of bridge, hanger system, casing pipes and waterline connection at a total cost of \$2,008,624.00.

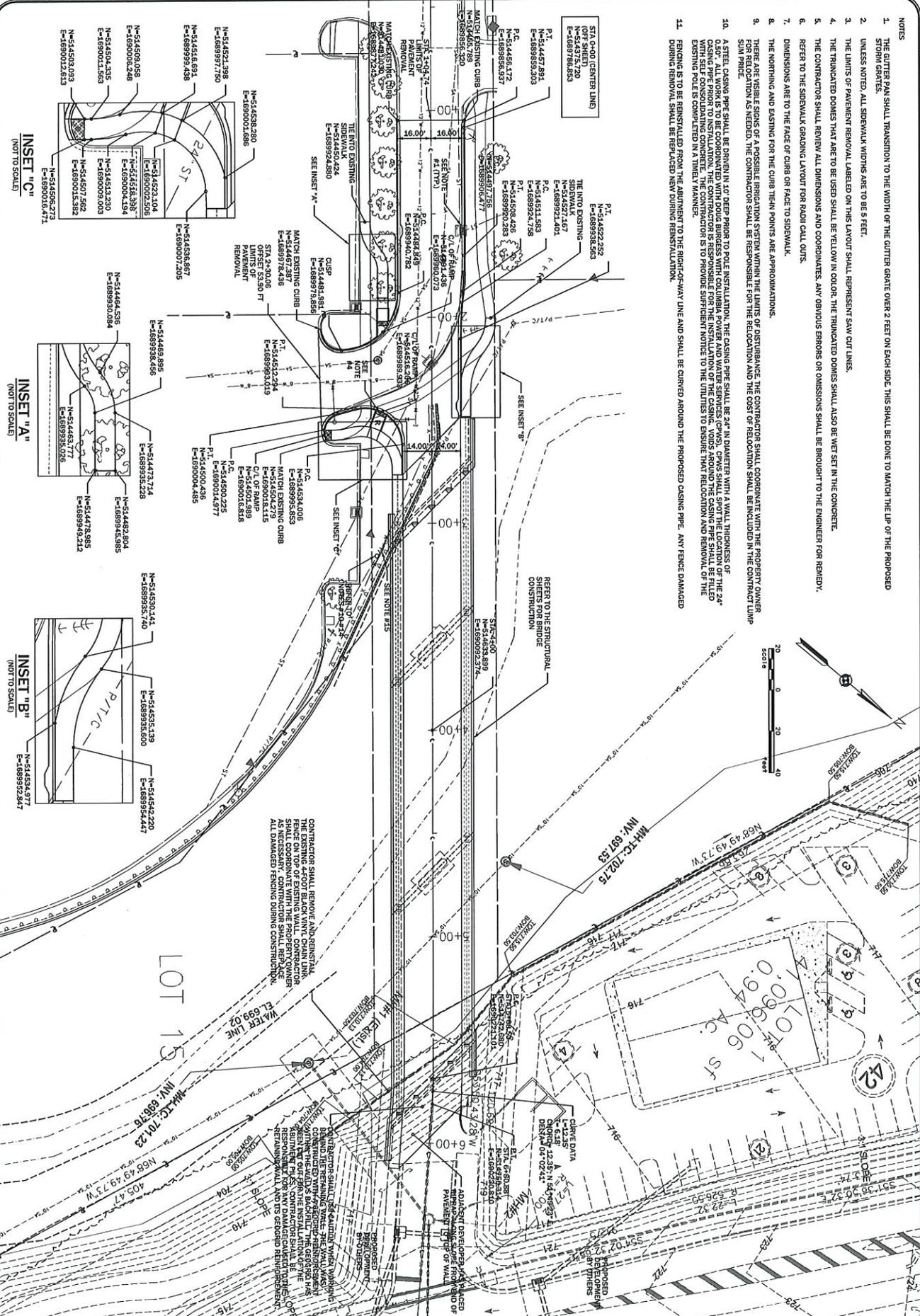
Staff recommends the Board give consideration to **Option 3** to leverage mobilization expense and the economies realized by construction work already being performed on the bridge structure to complete not only the bridge but also the hanger system, casing pipes and the waterline connection all together as one project. If the City were to elect to perform the work associated with the waterline connection at a later date, such work in all likelihood will be significantly more expensive. The cost for Option 3 is \$2,008,624. In the event there is a desire by the Board to proceed with Option 3, the waterline connection and all associated work would be funded from Water Development Fee funds at a cost of \$138,624 since this would be a water system improvement project. Cost recovery for this investment would come from future development in the area including most notably the remaining infill development associated with The Crossings property.

A Reimbursement Resolution (Resolution 19-26) will also be recommended for approval by Board in order to replenish City funds following the issuance of a bond issue to cover the cost of construction for the bridge only portion of the project. The waterline project, if approved by the Board, will be funded from Water Development Fees. CEI services will be authorized under separate Resolution (Resolution 19-28) that will require approval by the Board of Mayor and Aldermen with funding already approved for such services from a prior budget amendment approved by the Board.

STAFF RECOMMENDATION:

Staff recommends the bid be awarded to Summers Taylor, Inc. as the apparent low bidder with a base bid of \$1,870,000. Staff further recommends that the Board approve **Option 3** as outlined above for the construction of the bridge, hanger system, casing pipes, and the waterline connection and associated work at a total cost of \$2,008,624 with the understanding that all costs associated with the water line improvement project totaling \$138,624 would be funded from the Water Development Fee fund. The cost for the waterline improvements will be recovered from the collection of water development fees on nearby undeveloped property as well as other financial recovery that may be provided with development agreements entered into between the City and developers of nearby property. Lastly, staff recommends the Board authorize the Mayor to execute the contract documents contained in the Project Manual attached as an exhibit to Resolution 19-27.

- NOTES
1. THE GUTTER PAN SHALL TRANSITION TO THE WIDTH OF THE GUTTER GRADE OVER 2 FEET ON EACH SIDE. THIS SHALL BE DONE TO MATCH THE LIP OF THE PROPOSED SYSTEM CHANNELS.
 2. UNLESS NOTED, ALL SIDEWALK WIDTHS ARE TO BE 5 FEET.
 3. THE LIMITS OF PAVEMENT REMOVAL LABELED ON THIS LAYOUT SHALL REPRESENT SAW CUT LINES.
 4. THE TRUNCATED CONES THAT ARE TO BE USED SHALL BE YELLOW IN COLOR. THE TRUNCATED CONES SHALL ALSO BE SET IN THE CONCRETE.
 5. THE CONTRACTOR SHALL REVIEW ALL DIMENSIONS AND COORDINATES. ANY OBVIOUS ERRORS OR OMISSIONS SHALL BE BROUGHT TO THE ENGINEER FOR REMEDY.
 6. REFER TO THE SIDEWALK GRADING LAYOUT FOR RADIUS CALL OUTS.
 7. DIMENSIONS ARE TO THE FACE OF CURB OR FACE TO SIDEWALK.
 8. THE MORNING AND EVENING FOR THE CURB THE IN POINTS ARE APPROXIMATIONS.
 9. THERE ARE POSSIBLE SIGNS OF A POSSIBLE IRRIGATION SYSTEM WITHIN THE LIMITS OF DISTURBANCE. THE CONTRACTOR SHALL COORDINATE WITH THE PROPERTY OWNER FOR RELOCATION AS NEEDED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE RELOCATION AND THE COST OF RELOCATION SHALL BE INCLUDED IN THE CONTRACT LUMP SUM PRICE.
 10. A STEEL CASING PIPE SHALL BE DRIVEN IN 10 DEEP PRIOR TO POLE INSTALLATION. THE CASING PIPE SHALL BE 24" IN DIAMETER WITH A WALL THICKNESS OF 0.375". ALL WORK IS TO BE COMPLETED WITHIN 10 BUSINESS DAYS OF THE COMMENCEMENT DATE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE INSTALLATION OF THE CASING PIPE SHALL BE FILED WITH SELF CONSOLIDATING CONCRETE. THE CONTRACTOR IS TO PROVIDE SUFFICIENT NOTICE TO THE UTILITIES TO ENSURE THAT RELOCATION AND REMOVAL OF THE EXISTING POLE IS COMPLETED IN A TIMELY MANNER.
 11. FENCING IS TO BE REINSTALLED FROM THE ADJUTMENT TO THE RIGHT-OF-WAY LINE AND SHALL BE CURVED AROUND THE PROPOSED CASING PIPE. ANY FENCE DAMAGED DURING REMOVAL SHALL BE REPLACED NEW DURING REINSTALLATION.



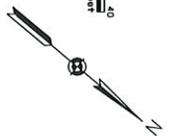
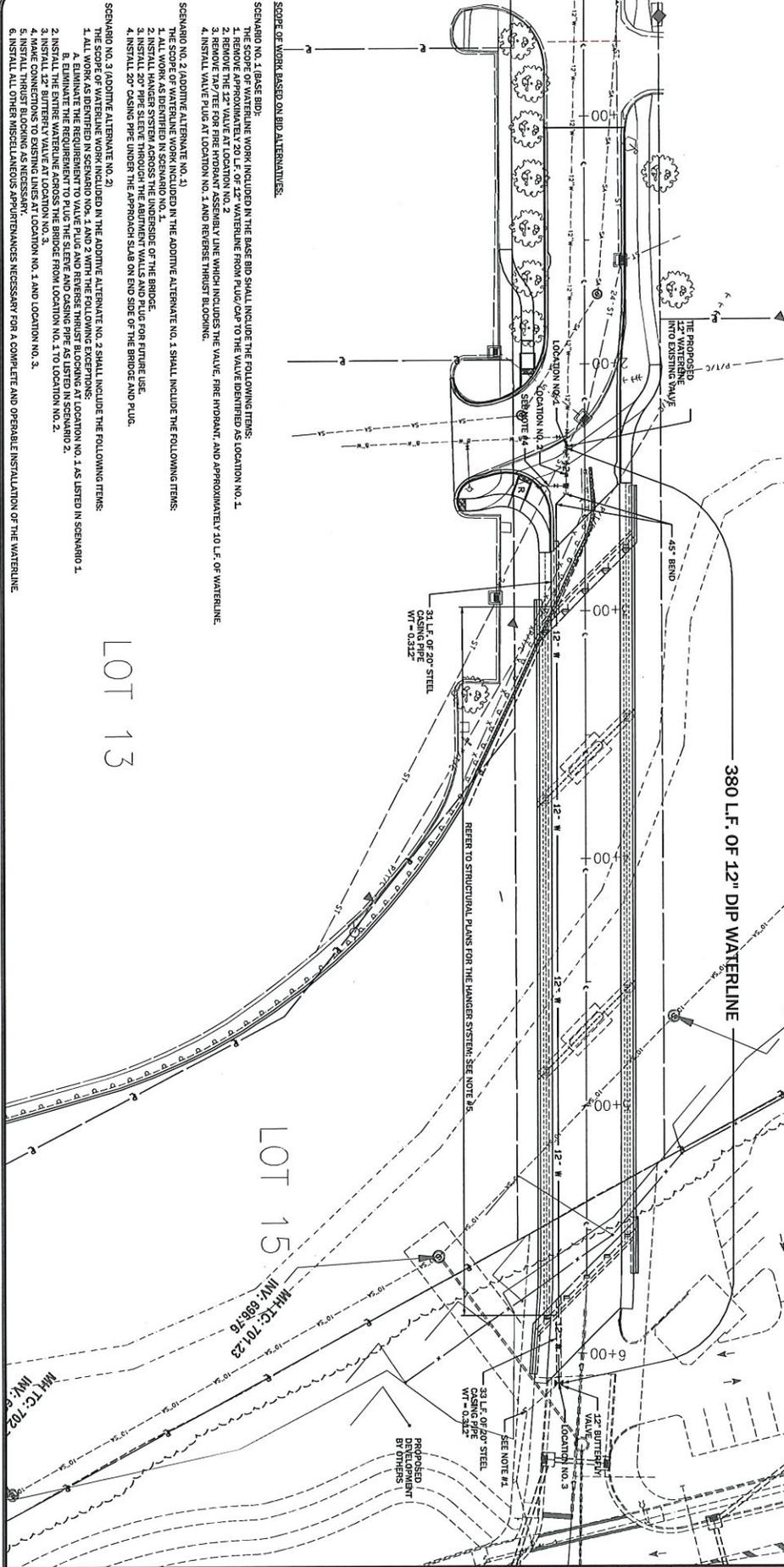
CONTRACTOR SHALL REMOVE AND REINSTALL FENCING WITHIN THE LIMITS OF DISTURBANCE. THE CONTRACTOR SHALL COORDINATE WITH THE PROPERTY OWNER FOR RELOCATION AS NEEDED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE RELOCATION AND THE COST OF RELOCATION SHALL BE INCLUDED IN THE CONTRACT LUMP SUM PRICE.

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<p>C5</p>	<p>PROPOSED LAYOUT</p>		<p>DEMPSEY, DILLING & ASSOCIATES, P.C. Engineering Consultants 502 Hazelwood Drive Smyrna, Tennessee 37167 ph. (615) 220-8800</p>
	<p>CROSSINGS CIRCLE BRIDGE AT McCORMICK CREEK CITY OF SPRING HILL MAURY COUNTY, TENNESSEE</p>		

NOTES:

1. THE DEVELOPER HAS LAID THE 12" WATERLINE TO NEAR THE BRIDGE APPROACH. THE CONTRACTOR SHALL INSTALL THE BUTTERFLY VALVE AND THEN TO THE WATERLINE AT THAT LOCATION.
2. REFER TO THE STRUCTURAL DRAWINGS FOR DETAILS CONCERNING THE WATERLINE HANGER SYSTEM.
3. THE CONTRACTOR SHALL REFER TO THE STANDARD DETAILS FOR TRENCH DETAIL AND THRUST BLOCKING.
4. REFER TO THE DEMOLITION PLAN FOR EXISTING WATERLINE RELATED ITEMS THAT ARE TO BE REMOVED.
5. THE BRIDGE PIPE TO BE USED SHALL BE 12" MECHANICAL JOINT CLASS 350 DUCTILE IRON PIPE AND SHALL BE INSTALLED WITH RESTRAINING GLANDS.
6. ALL PIPE OUTSIDE OF THE BRIDGE SHALL BE 12" MECHANICAL JOINT CLASS 350 DUCTILE IRON PIPE (WITHOUT RESTRAINING GLANDS) AND COMPLY WITH CITY OF SPRING HILL WATER SPECIFICATIONS.
7. STEEL CASING SHALL EXTEND FROM THE BRIDGE ABUTMENT TO 18" PAST THE END OF THE BRIDGE APPROACH SLAB. THE CASING SHALL INCLUDE CARRIER PIPE SPACERS AND CASING END CAPS.
8. ALL MATERIALS AND WORKMANSHIP FOR THE INSTALLATION OF THE PROPOSED WATER LINES AND APPURTENANCES SHALL CONFORM TO THE LATEST EDITION OF "STANDARD SPECIFICATIONS FOR WATER ADDITIONS" AS APPROVED BY THE CITY OF SPRING HILL AND THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION PRIOR TO BEING PLACED INTO SERVICE.
9. THE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO CONSTRUCTION. ANY UTILITIES DAMAGED AS A RESULT OF CONSTRUCTION ACTIVITIES BY THE CONTRACTOR OR HIS SUBCONTRACTORS SHALL BE REPAIRED OR REPLACED INKIND BY THE CONTRACTOR IN ACCORDANCE WITH THE STANDARDS OF THE RESPECTIVE UTILITY AND AT HIS OWN EXPENSE.
10. ALL NEW WATERLINE AND APPURTENANCES SHALL BE DISINTEGRATED IN ACCORDANCE WITH THE REQUIREMENTS OF THE CITY OF SPRING HILL AND THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION PRIOR TO BEING PLACED INTO SERVICE.
11. THE CONTRACTOR SHALL MAINTAIN A MINIMUM HORIZONTAL CLEAR SEPARATION OF 10-FEET FROM ANY EXISTING SANITARY SEWER LINE AND A MINIMUM VERTICAL CLEAR SEPARATION OF 24-INCHES WHEN CROSSING OVER ANY SANITARY SEWER.
12. THE PROPOSED WATERLINE SHALL BE INSTALLED WITH NO LESS THAN 30-INCHES OF COVER. A CONTINUOUS 12 GAUGE SHIELDED SOLID COPPER TRACER WIRE SHALL BE TIED TO THE PIPE AND A 4" WIDE METALLIC WARNING TAPE WITH THE WORDING "WARNING WATERLINE BELOW" SHALL BE BURIED APPROXIMATELY 25-INCHES ABOVE THE WATER LINE.



LOT 13

LOT 15

NO.	DATE	DESCRIPTION

C6

WATERLINE LAYOUT
CROSSINGS CIRCLE BRIDGE AT McCORMICK CREEK
CITY OF SPRING HILL
MAURY COUNTY, TENNESSEE

DATE	11/14/13
PROJECT NO.	13-000000
CONTRACT NO.	13-000000
SCALE	AS SHOWN
DESIGNED BY	
CHECKED BY	
APPROVED BY	
DATE	



DEMPSEY, DILLING & ASSOCIATES, P.C.
 Engineering Consultants
 502 Hazelwood Drive
 Smyrna, Tennessee 37167
 ph. (615) 220-5800
www.dempseydilling.com



January 31, 2019

File No. 0100-393

Victor Lay (via email)
City Administrator
City of Spring Hill
199 Town Center Parkway
Spring Hill, Tennessee 37174

**RE: CROSSINGS CIRCLE BRIDGE AT McCORMICK CREEK
BID REVIEW AND RECOMMENDATION**

Dear Mr. Lay:

Dempsey, Dilling & Associates, P.C. (DDA) has reviewed the bids submitted for the above-referenced project, and the apparent low bidder is Summers Taylor, Inc. in the amount of \$1,870,000.00 (base bid only). Attached is a copy of the bid summary for all bidders. For your reference I have attached a copy of the bid documents from Summers Taylor, Inc.

DDA has reviewed the project references submitted with the bidding documents. All three references were TDOT employees who oversaw TDOT bridge projects constructed by Summers Taylor, Inc. All three spoke well of Summers Taylor, Inc., and they noted that Summers Taylor, Inc. produced good quality finished projects. One reference had experience working with Summers Taylor on four different bridge projects through TDOT. These projects ranged in scope from a two-million dollar to a thirty-million dollar road and bridge project.

Based on the review of the bid tabulation and the project references, DDA recommends award of the project to Summers Taylor, Inc. in the amount of \$1,870,000.00 (base bid).

In addition to the base bid, the bidding documents included the following two additive alternates for waterline work across the bridge:

Additive Alternate No. 1 - Includes the necessary waterline relocation work for construction of the bridge; and installation of casing pipes and a hanger system for a future installation of a 12-inch waterline. The additive alternate price for this work is \$38,000.00.

Additive Alternate No. 2 – Includes the additional work necessary for the addition of the waterline across the bridge and connection on both sides. The additive alternate price for this work is \$103,000.00

Deductive Alternate No. 1 – Is for the elimination of work from Additive Alternate No. 1 which would no longer be necessary if both Additive Alternates 1 & 2 are approved. The deductive price for this work is \$2,376.00.

In summary, BOMA would be discussing and voting to proceed with one of the following options:

1. Proceed with just the base bid with no hanger system or waterline. Again, the base bid price would be \$1,870,000.00.

2. Proceed with the base bid and Additive Alternate 1 for installation of the hanger system only across the bridge and casing pipes under the approach slabs. The total price for this option is \$1,908,000.00.
3. Proceed with the base bid, Additive Alternates 1 & 2, and Deductive Alternate 1 for the complete installation of the bridge and waterline. The total price for this option is \$2,008,624.00

Upon approval to award the bid, the agreement and terms and conditions shall be approved in the attached contract book. The attached contract book was used for bidding purposes, and any revisions to it by the City will require acceptance by the contractor. The technical specifications were omitted but can be provided upon request.

Should you have any questions or comments, give me a call.

Sincerely,
DEMPSEY, DILLING & ASSOCIATES, P.C.
ENGINEERING CONSULTANTS



Cory D. Hall, P.E.
CDH: 50104

Enclosure

cc: Honorable Mayor Rick Graham (via email)
Chuck Downham, Assistant City Administrator (via email)
Chip Moore, Infrastructure Director (via email)
Patti Amorello, Finance Director (via email)
T.C. Norman, Water Distribution Manager (via email)
Tyler Scroggins, Public Works Director (via email)
Missy Stahl, Senior Project Manager (via email)
April Goad, City Recorder (via email)

SUMMARY OF BIDS
FOR
CITY OF SPRING HILL, TENNESSEE
CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK

BID OPENING: JANUARY 29, 2019, 2:00 P.M.

CONTRACTOR	BASE BID	ADD ALTERNATE NO. 1	ADD ALTERNATE NO.2	DEDUCT ALTERNATE NO. 1
Summers-Taylor, Inc. Elizabethton, TN	\$1,870,000.00	\$38,000.00	\$103,000.00	\$2,376.00
Bell & Associates Brentwood, TN	\$1,882,250.00	\$140,000.00	\$133,000.00	\$4,100.00
Twin K Construction, Inc. Helenwood, TN	\$2,137,140.79	\$47,201.02	\$103,446.97	\$4,138.83
Jones Bros. Contractors, LLC Mt. Juliet, TN	\$2,222,000.00	\$106,000.00	\$119,000.00	\$9,000.00
Dement Construction Jackson, TN	\$2,263,562.74	\$136,132.00	\$126,350.00	\$4,100.00
Superior Construction Nashville, TN	\$2,462,500.00	\$86,215.00	\$141,790.00	\$3,550.00
Brown Builders, Inc. Springfield, TN	\$2,600,000.00	\$40,000.00	\$145,000.00	\$1,500.00
Cumberland Valley Constructors Nashville, TN	No Bid			

Dempsey, Dilling & Associates, P.C.
File No. 0100-393

SUMMERS-TAYLOR, INC
P O BOX 1628
ELIZABETHTON, TN 37644
LIC.NO. 69
EXP.DATE: 04/30/2019
CLASS: BC;HC-5;HC-D;HRA;MU

TO

MR. VICTOR LAY, CITY ADMINISTRATOR
CITY OF SPRING HILL
199 TOWN CENTER PARKWAY
SPRING HILL, TN 37174

BID FOR: CROSSINGS CIRCLE BRIDGE
AT MCCORMICK CREEK
CITY OF SPRING HILL, TN
01/29/19 2:00 PM

List of 3 Similar Projects

CNP016 Polk Co, TN - The construction of a concrete Bulb-Tee beam bridge on U.S. 64 (S.R. 40) over Maddens Branch (L.M. 11.06), including grading, drainage and paving.

TDOT - William Curtis - Engineer 423-478-0338

March 2015 - November 2016

CNP287 Jefferson Co., TN - The construction of a welded steel plate girder bridge on S.R. 92 over the French Broad River in Dandridge (L.M. 9.16), including grading, drainage and paving.

TDOT - Richard McNabb - Engineer 423-623-1197

December 2015 - Current

CNR044 Franklin Co., TN - The construction of either a concrete Bulb-Tee beam or welded steel plate girder bridge on S.R. 127 over the Elk River (L.M. 6.21), including grading, drainage and paving.

TDOT - Shenwar Hussein - Engineer 931-461-4241

March 2017 - Current

SECTION 00330

BID PROPOSAL

**CITY OF SPRING HILL
CROSSINGS CIRCLE BRIDGE
AT MCCORMICK CREEK**

Bid Opening Date and Time:
Tuesday, January 29, 2019
Receive Bids Until:
2:00 P.M. Local Time

Place: Spring Hill City Hall
199 Town Center Parkway
Spring Hill, TN 37174

Bids will be opened and read
aloud at: 2:00 P.M. Local Time

Pre-bid Meeting Date and Time:
Friday, January 18, 2019
10:00 A.M. Local Time
Spring Hill City Hall

Proposal of SUMMERS TAYLOR INC

(hereinafter called "Bidder"), a corporation/partnership/individual
(STRIKE OUT INAPPLICABLE TERMS)

doing business as SUMMERS TAYLOR INC

within CARTER COUNTY TENNESSEE
(COUNTY AND STATE)

TO: Mr. Victor Lay, City Administrator
City of Spring Hill
199 Town Center Parkway
Spring Hill, TN 37174

Mr. Lay:

The Bidder, in compliance with your Advertisement for Bids for the CITY OF SPRING HILL, TENNESSEE, **CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK** having examined the drawings and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project (including the availability of materials and labor), hereby proposes to furnish, as applicable, all labor,

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materials, and supplies to construct the project in accordance with the Contract Documents within the time set forth therein and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the bidding instruments, of which this proposal is a part.

The undersigned Bidder does hereby declare and stipulate that this proposal is made in good faith, without collusion or connection with any other person or persons bidding for the same work, and that it is made in pursuance of and subject to all the terms and conditions of the construction contract, the detailed specifications, and the drawings pertaining to the work to be done, all of which have been examined by the undersigned.

The Bidder hereby agrees to commence work under this contract on or before a date to be specified in a written "Notice to Proceed" and to complete the project fully within two hundred and seventy (270) consecutive calendar days thereafter. The Bidder further agrees to pay, as liquidated damages, the sum of Five Hundred Dollars (\$500.00) per day for each consecutive calendar day that expires after the time specified for completion of the contract until the project is fully complete.

The Bidder hereby agrees that preference will be given to domestic construction materials and further agrees to require subcontractors, materialmen, and suppliers to also give preference to domestic construction materials.

The Bidder acknowledges receipt of the following addenda:

- No. 1 Dated: 1/22/19
- No. _____ Dated: _____
- No. _____ Dated: _____
- No. _____ Dated: _____

The owner reserves the right to reject any or all bids and to waive any informalities.

The Bidder agrees to furnish, pay for and install all plant, labor, materials, equipment and incidentals necessary for the construction, testing, and placing into operation of the **CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK**, all in accordance with the drawings and specifications, for the lump sum prices as shown below:

BASE BID ITEM 1
CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK

Bidder agrees to perform all the work described in the CONTRACT DOCUMENTS for the following lump sum price:

The Bidder agrees to furnish, pay for and install all labor, materials, equipment, and all incidentals necessary for the construction, material testing, and placing into complete operations of the Crossings Circle Bridge at McCormick Creek, all in accordance with the construction drawings and specifications, for the lump sum price as shown below, which shall constitute the total base bid. The Base Bid shall include the removal of all water infrastructure components in conflict with the project and plugging of the existing 12" butterfly valve with a reverse kicker. Refer to the construction drawings for a listing of estimated quantities and scope of waterline removal/installation.

ONE MILLION EIGHT HUNDRED SEVENTY THOUSAND Dollars
(Words)

\$ 1,870,000.⁰⁰
(Figures)

ADDITIVE ALTERNATE NO. 1
**HANGER SYSTEM (WITHOUT WATERLINE) INSTALLED ACROSS THE BRIDGE
(FOR FUTURE INSTALLATION OF 12" WATERLINE ACROSS THE BRIDGE)**

Bidder agrees to perform all the work described in the CONTRACT DOCUMENTS for the following lump sum price:

The Bidder agrees to furnish, pay for, and install all labor, materials, equipment, and all incidentals necessary for the construction, testing, and placing into complete operations of the hanger system across the bridge for a 12" waterline, all in accordance with the construction drawings and specifications, for the lump sum price as shown below, which shall constitute the total additive alternate bid price. The additive alternate price shall include the necessary casing pipes under the approach slabs, the sleeves through both abutments with plugs, and the hanger brackets to be installed across the underside of the bridge deck. Refer to the construction drawings for a listing of estimated quantities and scope of waterline removal/installation.

THIRTY EIGHT THOUSAND Dollars
(Words)

\$ 38,000.⁰⁰
(Figures)

ADDITIVE ALTERNATE NO. 2

12" WATERLINE (WITHOUT HANGER SYSTEM) INSTALLED ACROSS THE BRIDGE

Bidder agrees to perform all the work described in the CONTRACT DOCUMENTS for the following lump sum price:

The Bidder agrees to furnish, pay for and install all labor, materials, equipment, and all incidentals necessary for the construction, testing, and placing into complete operations of the 12" waterline across the bridge utilizing the hanger system as defined in Additive Alternate No. 1, all in accordance with the construction drawings and specifications, for the lump sum price as shown below, which shall constitute the total additive alternate bid price. The additive alternate price shall include the water line, connection to the existing 12" line on The Crossings Shopping Center side and on the north side, a 12" butterfly valve, DIP fittings, and all other appurtenances necessary for the complete installation of the waterline. Refer to the construction drawings for a listing of estimated quantities and scope of waterline removal/installation.

ONE HUNDRED THREE THOUSAND Dollars
(Words)

\$ 103,000.⁰⁰
(Figures)

DEDUCTIVE ALTERNATE NO. 1

12" VALVE PLUG AND REVERSE THRUST BLOCKING

Bidder agrees to perform all the work described in the CONTRACT DOCUMENTS for the following lump sum price:

In the event that Additive Alternate No. 2 is awarded to the contractor, the plugging of the existing 12" butterfly valve with a reverse kicker (which was included as part of the Base Bid) will not be necessary. The deductive alternate price shall include all labor, materials, equipment, and all incidentals which would no longer be required as part of the Base Bid scope. Refer to the construction drawings for a listing of estimated quantities and scope of waterline removal/installation.

TWO THOUSAND THREE HUNDRED SEVENTY SIX Dollars
(Words)

\$ 2,376.⁰⁰
(Figures)

As part of the bid submittal, the bidder shall include at a minimum three references of similar projects. The references shall include the following: name of project, project description, location, construction dates, and reference contact name and phone number.

NOTE: Amount shall be shown in both words and figures. In case of a discrepancy, the amount in words shall govern.

The lump sum prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

The Bidder understands that the Owner reserves the right to make award on any basis deemed to be in the best interest of the Owner provided it is consistent with the Bidder's above indicated request. The Owner also reserves the right to reject any or all bids and to waive any informalities in the bidding. The Bidder also agrees that the Owner reserves the right to negotiate with the Base Bid material supplier, should the secondary or other supplier submit a lower bid for the materials, if the materials quoted are not equal to the Base Bid equipment.

It is the desire of the Owner to award this contract to a single contractor on either the basis of the Base Bid alone or in conjunction with the Additive Alternates and Deductive Alternates, whichever will be in the best interest of the Owner.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time for receiving bids. Upon receipt of written notice of the acceptance of his bid, the Bidder will execute the formal contract attached within ten (10) days and deliver a surety bond or bonds as stipulated in Paragraph 22 of the General Conditions. The bid security attached in the sum of FIVE PERCENT (5%) Dollars (\$ 93,500.00) shall become the property of the Owner in the event the contract and bond are not executed within the time set forth as liquidated damages for the delay and additional expense to the Owner caused thereby.

All the various phases of work enumerated in the detailed specifications with their individual jobs and overhead, whether specifically mentioned, included by implication, or appurtenant thereto, are to be performed by the Contractor under the scope of one of the base/additive/deductive bids listed, irrespective of whether they are named in said list.

Payment for work performed will be in accordance with the base bid schedule, subject to changes provided for in the construction contract.

(see next page for signature requirements)

(SEAL - if Bid is by
a corporation)



Respectfully submitted,

By: LEE HAMZICK Bidder
(Signature)

LEE HAMZICK
*(Printed)

Title: VICE-PRESIDENT

Business Address: _____

700 WEST ELK AVE

ELIZABETHTON, TN 37043

Telephone Number: 423.543.3181

Contractor's
License Number: 69

Contractor's
Monetary Limit: UNLIMITED

Expiration Date: APRIL 30TH, 2019

*Type or print name below signature.

END OF SECTION

SECTION 00411

BID BOND

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, SUMMERS TAYLOR, INC., as Principal, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, as Surety, are hereby held and firmly bound unto the City of Spring Hill, Tennessee, as Owner in the penal sum of 5% OF ATTACHED BID Dollars (\$ _____) for the payment of which well and truly to be made we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns. Signed this the 29TH day of JANUARY, 2019. The condition of the above obligation is such that whereas the Principal has submitted to the City of Spring Hill Tennessee, a certain bid, attached hereto and hereby made a part hereof to enter into a contract in writing, for the **CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK.**

NOW, THEREFORE:

- a. If said bid shall be rejected,
- b. Or in the alternate, if said bid shall be accepted and the Principal shall execute and deliver a contract in the form of contract attached hereto (properly completed in accordance with said bid) and shall furnish a bond for his faithful performance of said contract and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid,

then this obligation shall be void; otherwise, the same shall remain in force and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

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

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

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

SUMMERS TAYLOR, INC.

Principal
By: ~~LEE HAMRICK~~ HAMRICK, VP

LEE HAMRICK, VICE PRES
Print Name and Title
JANUARY 29, 2019
Date

Surety
By: Frank E. Neal
General Agent or
Attorney-in-Fact
FRANK E. NEAL, JR.
JANUARY 29, 2019
Date

(Seal)

END OF SECTION

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **MICHAEL BOND, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Frank E. NEAL, III, Mark NEAL, Brent W. NEAL, Michael B. MATTOX, Robert A. DAVIDSON, Jerri BAIN and Matthew W. KEYTON**, all of Nashville, Tennessee, **EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 27th day of August, A.D. 2018.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



By: *Dawn E. Brown*
*Assistant Secretary
Dawn E. Brown*

Michael Bond
*Vice President
Michael Bond*

State of Maryland
County of Baltimore

On this 27th day of August, A.D. 2018, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **MICHAEL BOND, Vice President, and DAWN E. BROWN, Assistant Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Constance A. Dunn



Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2019

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 24th day of January, 2019.



David McVicker, Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT ALL REQUIRED INFORMATION TO:

Zurich American Insurance Co.
Attn: Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056

DRUG-FREE WORKPLACE AFFIDAVIT

STATE OF TENNESSEE

COUNTY OF CARTER

As part of the City of Spring Hill's Drug Free Workplace policy, the City has adopted a drug and alcohol-testing program for its employees. The City's testing program may consist of a periodical random employee selection process. The selected employees may be tested for drug and alcohol substance abuse. Should an employee test positive for drugs or alcohol then the employee may be required to enroll and complete a drug treatment program. Should the employee be randomly selected and test positive a second time, then he could possibly be terminated. The City of Spring Hill requires that all bidders (who submit bids for the City of Spring Hill projects) submit an affidavit that the bidder operates a drug and alcohol-testing program with requirements "at least as stringent as that of the program operated by the City of Spring Hill".

The undersigned, principal officer of SUMMERS TAYLOR INC., an employer of five (5) or more employees bidding on a project for the City of Spring Hill, Tennessee government to provide construction services, hereby state under oath as follows:

1. The undersigned is a principal officer of SUMMERS TAYLOR INC. (hereinafter referred to as the "Company"), and is duly authorized to execute this Affidavit on behalf of the Company.
2. The Company submits this Affidavit pursuant to T.C.A. §50-9-113 (see attached description) and T.C.A. §50-9-114, which requires each employer with no less than five (5) employees receiving pay who bids and contracts with the state or any local government to provide construction services to submit an affidavit stating that such employer has a drug-free workplace program that complies with Title 50, Chapter 9, of the *Tennessee Code Annotated* and that is as stringent as the City of Spring Hill's program described above.
3. The Company is in compliance with T.C.A. §50-9-113 and T.C.A. §50-9-113.

Further affiant saith not.

LEE HAMRICK
Principal Officer

STATE OF TN

COUNTY OF Bradley



Before me personally appeared Lee Hamrick, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the foregoing affidavit for the purposes therein contained.

Witness my hand and seal at office this 29th day of January, 2019.

Sheri Raines
Notary Public

My commission expires: 4/20/22

50-9-113. State and local government construction contracts.

- (a) Each employer with no less than five (5) employees receiving pay who contracts with the state or any local government to provide construction services or who is awarded a contract to provide construction services or who provides construction services to the state or local government shall submit an affidavit stating that such employer has a drug-free workplace program that complies with this chapter, in effect at the time of such submission of a bid at least to the extent required of governmental entities. Any private employer that certifies compliance with the drug-free workplace program, only to the extent required by this section, shall not receive any reduction in workers' compensation premiums and shall not be entitled to any other benefit provided by compliance with the drug-free workplace program set forth in this chapter. Nothing in this section shall be construed to reduce or diminish the rights or privileges of any private employer who has a drug-free workplace program that fully complies with this chapter. For purposes of compliance with this section, any private employer shall obtain a certificate of compliance with the applicable portions of the Drug-free Workplace Act from the department of labor and workforce development. No local government or state governmental entity shall enter into any contract or award a contract for construction services with an employer who does not comply with the provisions of this section.
- (b) For the purposes of this section, "employer" does not include any utility or unit of local government. "Employer" includes any private company and/or corporation.
- (c) If it is determined that an employer subject to the provisions of this section has entered into a contract with a local government or state agency and such employer does not have a drug-free workplace pursuant to this section, such employer shall be prohibited from entering into another contract with any local government or state agency until such employer can prove compliance with the drug-free workplace program pursuant to this section. If the same employer again contracts with any local government or state agency and does not have a drug-free workplace program pursuant to this section, then such employer shall be prohibited from entering into another contract with any local government or state agency for not less than three (3) months from the date such violation was discovered and verified and shall be prohibited from entering into another contract until such employer complies with the drug-free workplace program pursuant to this section. If the same employer for a third time contracts with any local government or state agency and does not have a drug-free workplace program pursuant to this section, then such employer shall be prohibited from entering into another contract with any local government or state agency for not less than one (1) year from the date such violation was discovered and verified and shall be prohibited from entering into another contract until such employer complies with the drug-free workplace program pursuant to this section.
- (d) A written affidavit by the principal officer of a covered employer provided to a local government at the time such bid or contract is submitted stating that the employer is in compliance with this section shall absolve the local government of all further responsibility under this section and any liability arising from the employer's compliance or failure of compliance with the provisions of this section.

[Acts 2000, ch.918,§§ 1,2.]

PROJECT MANUAL
Documents and Specifications

CITY OF SPRING HILL, TENNESSEE

CROSSINGS CIRCLE BRIDGE
AT MCCORMICK CREEK

MAYOR

HONORABLE RICK GRAHAM

BOARD OF ALDERMEN

BRUCE HULL, VICE MAYOR

VINCENT FUQUA

MATT FITTERER

KEVIN GAVIGAN

JEFF GRAVES

CHAD WHITTENBURG

AMY WURTH

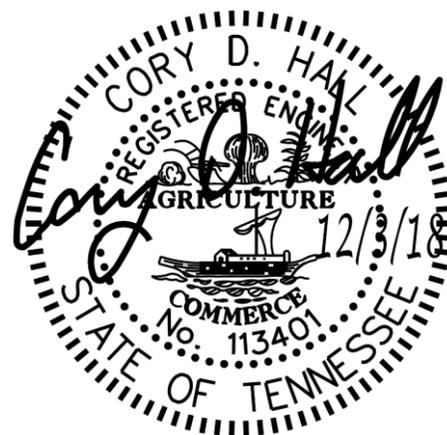
SUSAN ZEMEK

CITY ADMINISTRATOR

VICTOR LAY

ASSISTANT CITY ADMINISTRATOR

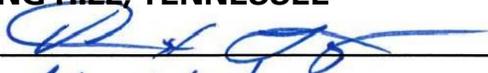
CHUCK DOWNHAM



DEMPSEY, DILLING & ASSOCIATES, P.C. ENGINEERING CONSULTANTS

502 HAZELWOOD DRIVE
SMYRNA, TENNESSEE 37167
TEL 615/220-5800
WWW.DEMPSEYDILLING.COM

CITY OF SPRING HILL, TENNESSEE

Approved By: 

Title: City Administrator

Date: 12/6/2018

Date: DECEMBER, 2018

File No.: 0100-393

Contract Set No.: _____

INDEX TO PROJECT MANUAL

File No. 0100-393

GENERAL

This Project Manual follows the Construction Specifications Institute Format Document Identifying System and Cost Accounting Numbers. Non-applicable division and section references have been omitted.

Recipients of bidding instruments must consult this Index to determine the full scope of the work involved and to ensure that all pages of the project manual and drawings have been included.

Neither the Owner nor the Engineer will be responsible for bids submitted that are based on incomplete bidding instruments.

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00330	Bid Form	6
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00431	Drug-Free Workplace Affidavit	2
-----	Attestation Regarding Personnel	1
-----	Indemnification Agreement	1
00514	Agreement	2
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2. SWPPP and Notice of Coverage for Construction General Permit
3. ARAP Permit
4. Target Agreement
5. Construction Easements
6. TDEC Waterline Installation Approval Letter

C O N T R A C T D O C U M E N T S

INVITATION TO BID

CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK
CITY OF SPRING HILL, TN

Separate sealed bids for the **CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK** will be received by the City of Spring Hill, Tennessee at City Hall, 199 Town Center Parkway, Spring Hill, Tennessee 37174 until 2:00 P.M., local time, on **Tuesday, January 29, 2019**, and then at said time publicly opened and read aloud.

Project consists of the following: The project is a concrete bridge located across McCormick Creek and will connect The Crossings Shopping development to the proposed development at 5426 Main Street. Work will include construction of a concrete bridge structure spanning McCormick Creek with 2 pier supports. Roadway work for tie-ins will include storm sewer pipe and structures, curb, sidewalk, curb ramps, asphalt paving, striping, erosion control, site grading, traffic control, and all incidental work necessary for a complete and operable project. Work shall also include a two bid alternates for a 12" waterline across the bridge supported by a hanger system below the bridge. All work shall be in accordance with Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction dated January 1, 2015 including all supplemental specifications, supplemental drawings and amendments to the documents.

A pre-bid conference for the project will be held at 10:00 A.M. on **Friday, January 18, 2019** at the Spring Hill's City Hall located at 199 Town Center Parkway, Spring Hill, Tennessee, 37174. Representatives of the Owner and Engineer will be present to discuss the project. Bidders are encouraged but not required to attend.

The Instructions to Bidders, Form of Agreement, Drawings, Specifications, Forms of Bid Bond and of Performance and Payment Bonds, and other bidding instruments may be examined at Spring Hill City Hall and the following locations:

DEMPSEY, DILLING & ASSOCIATES, P.C. <i>Engineering Consultants</i> 502 Hazelwood Drive Smyrna, TN 37167 (615) 220-5800	MCGRAW HILL CONSTRUCTION (865) 428-3515 www.construction.com
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Copies may be obtained at the office of DEMPSEY, DILLING & ASSOCIATES, P.C. *Engineering Consultants*, upon the NON-REFUNDABLE payment of \$200.00 for each set. The Owner reserves the right to waive any informalities and to reject any or all bids.

All Bidders must be licensed Contractors in the State of Tennessee in strict accordance with State regulations. No bid will be opened unless the outside of the sealed envelope containing the bid provides the following information: the name, license number, the date of the license's expiration, and the classification of the contractors applying to the bid for the prime contract and for electrical, plumbing, heating, ventilation, and air conditioning contracts (if applicable to the project), except when the bid is in an amount less than twenty-five thousand dollars (\$25,000). When the bid is less than twenty-five thousand dollars (\$25,000), the name of the contractor only may appear on the outside of the envelope containing the bid, and upon opening the envelope, if such bid is in excess of twenty-five thousand dollars (\$25,000), the same shall automatically be disqualified. Prime contractor bidders who are to perform the electrical, plumbing, heating, ventilation and air conditioning (if applicable to the project) must be so designated upon the outside of the envelope. Failure of any bidder to comply therewith shall void such bid and the envelope containing such bid shall not be opened or considered. In the case of joint ventures bids, each party submitting the bid must provide this information. All Bidders shall comply with the Contractors Licensing Act of 1976 and as amended (TCA Title 62). All bidders shall comply with the Tennessee Contractor' License law Section 62-6-119 (Bid documents - Required disclosure by bidders) when submitting bids.

All bidders shall adhere to Title VI of the Civil Rights Act enacted in 1964 which states that "No person in the United States shall, on grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance", state of Tennessee funding, and/or funded by the City of Spring Hill.

All bids must be made out on the Bid Form bound in the contract documents, and the Bid Form should **NOT** be detached from the contract documents. Bids will not be opened from Bidders who have not obtained the contract documents from the Engineer. With the bid, each Bidder must deposit security in the amount of five percent (5%) of the amount of the bid, subject to the conditions stated in the Instructions to Bidders. A Performance Bond and a Payment Bond, each in the amount of one hundred percent (100%) of the contract amount will be required for the successful Bidder. No Bidder may withdraw his bid within sixty (60) days after the actual date of the opening.

Honorable Rick Graham
Mayor, City of Spring Hill

SECTION 00130

INSTRUCTION TO BIDDERS

1 - DEFINED TERMS

Terms used in these Instructions to Bidders that are defined in the Standard General Conditions of the construction contract, NSPE-ACEC Document 1910-8, CSI 56465 (latest edition), have the meanings assigned to them in the General Conditions. The term "Successful Bidder" means the lowest qualified, responsible Bidder to whom the Owner (on the basis of the Owner's evaluation as hereinafter provided) makes award.

2 - COPIES OF BIDDING INSTRUMENTS

2.1 Complete sets of bidding instruments in the number and for the deposit or payment sum, if any, stated in the Advertisement or Invitation may be obtained from the Engineer (unless another issuing office is designated in the Advertisement or Invitation to Bid). The deposit will be NON-REFUNDABLE as stated in the Advertisement for Bids.

2.2 Complete sets of bidding instruments shall be used in preparing bids; neither the Owner nor the Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of bidding instruments.

2.3 The Owner and Engineer, in making copies of the bidding instruments available on the above terms, do so only for the purpose of obtaining bids on the work and do not confer a license or grant for any other use.

3 - QUALIFICATIONS OF BIDDERS

To demonstrate qualifications to perform the work, each Bidder must be prepared to submit, within five (5) days of a request from the Owner, written evidence of the kinds set forth in the Supplementary Conditions, e.g., financial data, previous experience, and evidence of authority to conduct business in the jurisdiction where the project is located. Bidders must be qualified and experienced in performing roadway and bridge projects.

4 - EXAMINATION OF BIDDING INSTRUMENTS AND SITE

4.1 Before submitting a bid, each Bidder must (a) examine the bidding instruments thoroughly; (b) visit the site to familiarize himself with local conditions that may in any manner affect the cost, progress, or performance of the work; (c) familiarize himself with federal, state, and local laws, ordinances, rules, and regulations that may in any manner affect the cost, progress, or performance of the work; and (d) study and carefully correlate his observations with the bidding instruments. The bidder will not be allowed additional cost based on any existing conditions of the

project which were or were not observed by the bidder prior to or after submitting his bid. All said existing conditions are considered incidental to performing work items whether or not indicated in the contract bidding documents.

4.2 Reference is made to the Supplementary Conditions for the identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or other factors affecting the cost, progress, or performance of the work that have been relied upon by the Engineer in preparing the drawings and specifications for this project. Before submitting his bid, each Bidder will, at his own expense, make any additional investigations and tests as the Bidder may deem necessary to determine his bid for the performance of the work in accordance with the time, price, and other terms and conditions of the bidding instruments.

4.3 On request, the Owner will provide each Bidder access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of his bid.

4.4 The lands upon which the work is to be performed rights-of-way for access thereto, and other lands designated for use by the Contractor in performing the work are identified in the General Conditions, Supplementary Conditions, or the drawings.

4.5 The submission of a bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement of this Article 4 and that the bidding instruments are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the work.

5 - INTERPRETATIONS

All questions about the meaning or intent of the bidding instruments shall be submitted to the Engineer in writing. Replies will be issued by addenda that are mailed, emailed, or delivered to all parties recorded by the Engineer as having received the bidding instruments. Questions received less than ten (10) days prior to the date for opening of bids will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6 - BID SECURITY

6.1 For each project bid upon, bid security shall be made payable to the Owner in an amount of five percent (5%) of the Bidder's maximum bid price and in the form of a certified or bank check or a bid bond, on the form attached, issued by a Surety meeting the requirements of paragraph 5.1 of the General Conditions.

6.2 The bid security of the successful Bidder will be retained

until such Bidder has executed the Agreement and furnished the required contract security, whereupon it will be returned. If the successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within twenty (20) days of the Notice of Award, the Owner may annul the Notice of Award, and the bid security of that Bidder will be forfeited. The bid security of any Bidder whom the Owner believes to have a reasonable chance of receiving the award may be retained by the Owner until either the seventh day after the "effective date of the Agreement" (which term is defined in the General Conditions) or the sixty-first (61st) day after the bid opening, whichever is earlier. Bid security of other Bidders will be returned within seven (7) days of the bid opening.

7 - CONTRACT TIME

The number of days within which, or the date by which, the work is to be completed (the contract time) is set forth in the Bid Form and will be included in the Agreement.

8 - LIQUIDATED DAMAGES

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

9 - SUBSTITUTE MATERIAL AND EQUIPMENT

If the Contract is awarded, this will be done on the basis of the materials and equipment described in the drawings or specified in the specifications without consideration of possible substitute of "or equal" items. Whenever it is included in the drawings or specified in the specifications that a substitute or "or equal" item of material or equipment may be furnished or used by the Contractor if acceptable to the Engineer, application for such acceptance will not be considered by the Engineer until after the effective date of the Agreement. The procedure for submittal of any such application by the Contractor and consideration by the Engineer is set forth in paragraphs 6.7.1, 6.7.2, and 6.7.3 of the General Conditions, which may be supplemented in the Supplementary Conditions.

10 - SUBCONTRACTORS, ETC.

10.1 If the Supplementary Conditions require the identity of certain Sub-contractors or other persons and organizations to be submitted to the Owner in advance of the Notice of Award, the apparent successful Bidder, and any other Bidder so required, will within seven (7) days after the day of bid opening submit to the Owner a list of all Subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the work and for whom such identification is required. If requested by the Owner, such list shall be accompanied by an experience statement with pertinent information as to similar

projects and other evidence of qualification for each such Subcontractor, person, and organization. If, after due investigation, the Owner or Engineer has reasonable objection to any proposed Subcontractor or other person or organization, either the Owner or Engineer may, before giving the Notice of Award, request the apparent successful Bidder to submit an acceptable substitute. If the apparent successful Bidder declines to make any such substitution, the Contract shall not be awarded to that Bidder, although his declining to make any such substitution will not constitute grounds for sacrificing his bid security. Any Subcontractor or other person or organization so listed and to whom the Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to the Owner and Engineer.

10.2 In Contracts in which the contract price is based on the cost of the work plus a fee, the apparent successful Bidder shall, prior to the Notice of Award, identify in writing to the Owner those portions of the work that such Bidder proposes to subcontract. After the Notice of Award, other portions of the work may be subcontracted only with the Owner's written consent.

10.3 No Contractor shall be required to employ any Subcontractor or other person or organization against whom he has reasonable objection.

11 - BID FORM

11.1 The Bid Form is attached hereto; additional copies may be obtained from the Engineer.

11.2 Bid Forms should be completed in black ink or by typewriter. The bid price of each item on the form must be completed.

11.3 Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer providing evidence of authority to sign), and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

11.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature. The official address of the partnership must be shown below the signature.

11.5 All names should be typed or printed below the signature.

11.6 The bid shall contain an acknowledgment of receipt of all addenda (the numbers of which shall be filled in on the Bid Form).

11.7 The address to which communications regarding the bid are to be directed should be shown.

12 - SUBMISSION OF BIDS

12.1 Bids shall be submitted at the time and place indicated in the Advertisement for Bids. Each bid must be submitted on the prescribed form. All blank spaces for bid prices should be filled in either black ink or by typewriter.

12.2 Each bid must be submitted in a sealed envelope bearing on the outside the following:

Name of Project
Name of Bidder
Address
License Number
License Expiration Date
License Classification Applying to This Bid

13 - MODIFICATION AND WITHDRAWAL OF BIDS

13.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a bid must be executed) and delivered to the place where bids are to be submitted at any time prior to the opening of bids.

13.2 If, within twenty-four (24) hours after bids are opened, any Bidder files a duly signed written notice with the Owner and promptly thereafter demonstrates to the reasonable satisfaction of the Owner that there was a material and substantial mistake in the preparation of his bid, that Bidder may withdraw his bid and the bid security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the work.

14 - RECEIPT AND OPENING OF BIDS

14.1 The City of Spring Hill, Tennessee (herein called the "Owner") invites "BIDS" on the form provided, all blanks of which must be appropriately filled in. Bids will be received by the Owner at City Hall, 199 Town Center Parkway, Spring Hill, Tennessee 37174, until 2:00 P.M., local time, on Tuesday, January 29, 2019 and then at said time publicly opened and read aloud. The envelope containing the bid must be sealed and addressed to the Mayor of the City of Spring Hill, Tennessee, with the name, address, license number, license expiration date, and classification of the Bidder written on the outside, and designated as bid for the **CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK.**

14.2 The Owner may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the

time and date specified shall not be considered.

15 - BIDS TO REMAIN OPEN

All bids shall remain open for sixty (60) days after the day of the bid opening, but the Owner may, at his sole discretion, release any bid and return the bid security prior to that date. Mutually agreed upon extensions of time may be made if necessary.

16 - AWARD OF CONTRACT

16.1 The Owner reserves the right to reject any and all bids, to waive any and all informalities, to negotiate contract terms with the successful Bidder, and to disregard all nonconforming, nonresponsive, or conditional bids. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

16.2 In evaluating bids, the Owner shall consider the qualifications of the Bidder, whether or not the bids comply with the prescribed requirements, and alternatives and unit prices if requested on the Bid Form. It is the Owner's intent to accept alternatives (if any are accepted) in the order in which they are listed on the Bid Form, although the Owner may accept them in any order or combination.

16.3 In evaluating bids, the Owner may also consider the qualifications and experience of Subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment). Operating costs, maintenance considerations, performance data, and guarantees of materials and equipment may also be considered by the Owner.

16.4 The Owner may conduct such investigations as he deems necessary to help evaluate any bid and to establish the responsibility, qualifications, and financial ability of the Bidders, proposed Subcontractors, and other persons and organizations to do the work to the Owner's satisfaction in accordance with the bidding instruments and within the prescribed time.

16.5 The Owner reserves the right to reject the bid of any Bidder who does not pass any such evaluation to the Owner's satisfaction.

16.6 If the Contract is to be awarded, it will be awarded to the lowest bidder who, in the Owner's estimation, can perform the work and that the award will be in the best interest of the project.

16.7 If the Contract is to be awarded, the Owner will give the successful Bidder a Notice of Award within ninety (90) days after the day of the bid opening.

17 - PERFORMANCE AND OTHER BONDS

Paragraph 5.1 of the General Conditions and the Supplementary Conditions set forth the Owner's requirements as to performance and other bonds. When the successful Bidder delivers the executed Agreement to the Owner, it shall be accompanied by the required contract security.

18 - SIGNING OF AGREEMENT

When the Owner gives a Notice of Award to the successful Bidder, it will be accompanied by at least three (3) unsigned counterparts of the Agreement and all other contract documents. Within fifteen (15) days thereafter, the Contractor shall sign and deliver at least three (3) counterparts of the Agreement to the Owner, with all other contract documents attached. Within ten (10) days thereafter, the Owner will deliver a fully signed counterpart to the Contractor. The Engineer will identify those portions of the contract documents not fully signed by the Owner and Contractor; such identification shall be binding on all parties.

19 - POWER OF ATTORNEY

Attorneys-in-fact who sign all bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

20 - LAWS AND REGULATIONS

The Bidder's attention is directed to the fact that all applicable state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though herein written out in full.

21 - LICENSING REQUIREMENTS

All Bidders must be licensed contractors, in strict accordance with all applicable State laws, to perform the type(s) of construction herein described.

22 - PREFERENCE IN EMPLOYMENT

Preference in employment on the project will, insofar as practicable, be given to qualified local labor.

23 - BASIS FOR DETERMINING RESPONSIBILITY OF LOW BIDDER

23.1 A responsible Bidder is one who has the ability to perform the Contract and meets certain minimum and/or special standards set forth in the Instructions to Bidders. Such factors as judgement, skill, and integrity will play an important part in the overall determination. Although additional criteria may be used, a responsible Bidder must at least:

- 23.1.1 Have adequate financial resources or the ability to secure such resources;
- 23.1.2 Have the necessary experience, organization, and technical qualifications and have or show proof that he can acquire the necessary equipment to perform the proposed Contract;
- 23.1.3 Be able to comply with all required performance schedules or completion dates, taking into account all existing commitments;
- 23.1.4 Have a satisfactory record of performance, integrity, judgement, and skill;
- 23.1.5 Be otherwise qualified and eligible to receive an award under the applicable laws and regulations; and
- 23.1.6 Maintain a permanent place of business.

23.2 A prospective Contractor must affirmatively demonstrate his responsibility and, when necessary, also demonstrate that of his proposed Subcontractors and suppliers. The prospective Contractor will be required to furnish the Owner or the Engineer with information sufficient to show that he currently meets these minimum standards.

24 - BASIS FOR DETERMINING RESPONSIVENESS OF LOW BIDDER

24.1 A responsive bid shall be a prerequisite to the award of a Contract. A non-responsive bid (offer) - i.e., one not complying in all material or essential respects with the Instructions to Bidders - may not be considered for award (acceptance) and may be rejected by the Owner. This compliance relates to both method/timeliness of submission and the substance of any resulting Contract.

24.2 Bids may be rejected if the Bidder:

- 24.2.1 Fails to bid on a listed item or bids zero on a listed item;
- 24.2.2 Fails to acknowledge an addendum;
- 24.2.3 Fails to use required Bid Forms;
- 24.2.4 Fails to sign the Bid Form properly;
- 24.2.5 Fails to conform to such essential requirements of the Instructions to Bidders as specifications, delivery schedule, or permissible alternatives;

- 24.2.6 Imposes conditions that in effect modify the requirements of the Instructions to Bidders or limit the Bidder's liability to the Owner so as to give him an advantage over other Bidders. Such conditions include:
 - 24.2.6.1 Attempts by the Bidder to protect himself against changes in conditions (e.g., increased costs) in a way that makes it impossible for the total price to the Owner to be determined for bid evaluation;
 - 24.2.6.2 Failure by the Bidder to state a price, stating in lieu thereof that the price shall be "price in effect at time of delivery";
 - 24.2.6.3 The Bidder's stating price with the qualification "price in effect at time of delivery";
 - 24.2.6.4 Unless authorized by the Instructions to Bidders, qualifications of the bid consisting of stipulations by the Bidder that the bid is to be considered only if he receives (or does not receive) another award under a separate procurement prior to the date of award; and/or
 - 24.2.6.5 Limitations made by the Bidder on the rights of the Owner under any contract clause that affects the quality, or delivery of the bids offered;
- 24.2.7 Receives a determination in writing from the Owner that the price bid is unreasonable;
- 24.2.8 Is a debarred or ineligible person or concern;
- 24.2.9 Fails to furnish the required bid bond or other guarantees;
- 24.2.10 After submitting a bid, transfers all of his assets or that part of his assets related to the bid during the period between the bid opening and the award, in which case the transferee may not take over the bid without the Owner's written permission, and the Owner may reject the bid; this also applies to Sub-bidders;
- 24.2.11 Fails to submit a bid before bids are opened;
- 24.2.12 Fails to list Subcontractor(s) and/or equipment manufacturer(s), if required to do so by the

Instructions to Bidders; and/or

- 24.2.13 Fails to submit required information for equipment (e.g., power consumption) when requested or instructed by the Instructions to Bidders.
- 24.3 When it is in the interest of the Owner, he may waive minor deviations in bids that do not:
 - 24.3.1 Affect price, quality, etc., of the articles to be furnished; or
 - 24.3.2 Prejudice the rights of another Bidder.

The Owner shall be responsible for determining "minor deviations."

25 - FOUR-HOUR SUB-BID TIME

The Contractor may use the Tennessee Contractors' Association four-hour bidding practice code for receiving sub-bids for the construction of municipal utilities. The purpose of this code agreement is to establish a formal procedure of giving and receiving prices on subcontracts, materials, and equipment that will provide the Contractor of municipal utilities with enough advance warning for him to analyze and evaluate sub-bids, materials, equipment prices, and his own bid prior to the bid filing. The use of the four-hour bidding practice code shall not in any way be a decisive factor for the acceptance or rejection of any bid or for the award of the Contract.

END OF SECTION

SECTION 00330

BID PROPOSAL

**CITY OF SPRING HILL
CROSSINGS CIRCLE BRIDGE
AT MCCORMICK CREEK**

Bid Opening Date and Time:
Tuesday, January 29, 2019
Receive Bids Until:
2:00 P.M. Local Time

Place: Spring Hill City Hall
199 Town Center Parkway
Spring Hill, TN 37174

Bids will be opened and read
aloud at: 2:00 P.M. Local Time

Pre-bid Meeting Date and Time:
Friday, January 18, 2019
10:00 A.M. Local Time
Spring Hill City Hall

Proposal of SUMMERS TAYLOR INC

(hereinafter called "Bidder"), a ~~corporation/partnership/individual~~
(STRIKE OUT INAPPLICABLE TERMS)

doing business as SUMMERS TAYLOR INC

within CARTER COUNTY TENNESSEE
(COUNTY AND STATE)

TO: Mr. Victor Lay, City Administrator
City of Spring Hill
199 Town Center Parkway
Spring Hill, TN 37174

Mr. Lay:

The Bidder, in compliance with your Advertisement for Bids for the CITY OF SPRING HILL, TENNESSEE, **CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK** having examined the drawings and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project (including the availability of materials and labor), hereby proposes to furnish, as applicable, all labor,

0100-393
00330-1

materials, and supplies to construct the project in accordance with the Contract Documents within the time set forth therein and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the bidding instruments, of which this proposal is a part.

The undersigned Bidder does hereby declare and stipulate that this proposal is made in good faith, without collusion or connection with any other person or persons bidding for the same work, and that it is made in pursuance of and subject to all the terms and conditions of the construction contract, the detailed specifications, and the drawings pertaining to the work to be done, all of which have been examined by the undersigned.

The Bidder hereby agrees to commence work under this contract on or before a date to be specified in a written "Notice to Proceed" and to complete the project fully within two hundred and seventy (270) consecutive calendar days thereafter. The Bidder further agrees to pay, as liquidated damages, the sum of Five Hundred Dollars (\$500.00) per day for each consecutive calendar day that expires after the time specified for completion of the contract until the project is fully complete.

The Bidder hereby agrees that preference will be given to domestic construction materials and further agrees to require subcontractors, materialmen, and suppliers to also give preference to domestic construction materials.

The Bidder acknowledges receipt of the following addenda:

No. 1 Dated: 1/22/19

No. _____ Dated: _____

No. _____ Dated: _____

No. _____ Dated: _____

The owner reserves the right to reject any or all bids and to waive any informalities.

The Bidder agrees to furnish, pay for and install all plant, labor, materials, equipment and incidentals necessary for the construction, testing, and placing into operation of the **CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK**, all in accordance with the drawings and specifications, for the lump sum prices as shown below:

BASE BID ITEM 1
CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK

Bidder agrees to perform all the work described in the CONTRACT DOCUMENTS for the following lump sum price:

The Bidder agrees to furnish, pay for and install all labor, materials, equipment, and all incidentals necessary for the construction, material testing, and placing into complete operations of the Crossings Circle Bridge at McCormick Creek, all in accordance with the construction drawings and specifications, for the lump sum price as shown below, which shall constitute the total base bid. The Base Bid shall include the removal of all water infrastructure components in conflict with the project and plugging of the existing 12" butterfly valve with a reverse kicker. Refer to the construction drawings for a listing of estimated quantities and scope of waterline removal/installation.

ONE MILLION EIGHT HUNDRED SEVENTY THOUSAND Dollars
(Words)

\$ 1,870,000.⁰⁰
(Figures)

ADDITIVE ALTERNATE NO. 1
**HANGER SYSTEM (WITHOUT WATERLINE) INSTALLED ACROSS THE BRIDGE
(FOR FUTURE INSTALLATION OF 12" WATERLINE ACROSS THE BRIDGE)**

Bidder agrees to perform all the work described in the CONTRACT DOCUMENTS for the following lump sum price:

The Bidder agrees to furnish, pay for, and install all labor, materials, equipment, and all incidentals necessary for the construction, testing, and placing into complete operations of the hanger system across the bridge for a 12" waterline, all in accordance with the construction drawings and specifications, for the lump sum price as shown below, which shall constitute the total additive alternate bid price. The additive alternate price shall include the necessary casing pipes under the approach slabs, the sleeves through both abutments with plugs, and the hanger brackets to be installed across the underside of the bridge deck. Refer to the construction drawings for a listing of estimated quantities and scope of waterline removal/installation.

THIRTY EIGHT THOUSAND Dollars
(Words)

\$ 38,000.⁰⁰
(Figures)

ADDITIVE ALTERNATE NO. 2

12" WATERLINE (WITHOUT HANGER SYSTEM) INSTALLED ACROSS THE BRIDGE

Bidder agrees to perform all the work described in the CONTRACT DOCUMENTS for the following lump sum price:

The Bidder agrees to furnish, pay for and install all labor, materials, equipment, and all incidentals necessary for the construction, testing, and placing into complete operations of the 12" waterline across the bridge utilizing the hanger system as defined in Additive Alternate No. 1, all in accordance with the construction drawings and specifications, for the lump sum price as shown below, which shall constitute the total additive alternate bid price. The additive alternate price shall include the water line, connection to the existing 12" line on The Crossings Shopping Center side and on the north side, a 12" butterfly valve, DIP fittings, and all other appurtenances necessary for the complete installation of the waterline. Refer to the construction drawings for a listing of estimated quantities and scope of waterline removal/installation.

ONE HUNDRED THREE THOUSAND Dollars
(Words)

\$ 103,000.⁰⁰
(Figures)

DEDUCTIVE ALTERNATE NO. 1

12" VALVE PLUG AND REVERSE THRUST BLOCKING

Bidder agrees to perform all the work described in the CONTRACT DOCUMENTS for the following lump sum price:

In the event that Additive Alternate No. 2 is awarded to the contractor, the plugging of the existing 12" butterfly valve with a reverse kicker (which was included as part of the Base Bid) will not be necessary. The deductive alternate price shall include all labor, materials, equipment, and all incidentals which would no longer be required as part of the Base Bid scope. Refer to the construction drawings for a listing of estimated quantities and scope of waterline removal/installation.

TWO THOUSAND THREE HUNDRED SEVENTY SIX Dollars
(Words)

\$ 2,376.⁰⁰
(Figures)

As part of the bid submittal, the bidder shall include at a minimum three references of similar projects. The references shall include the following: name of project, project description, location, construction dates, and reference contact name and phone number.

NOTE: Amount shall be shown in both words and figures. In case of a discrepancy, the amount in words shall govern.

The lump sum prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

The Bidder understands that the Owner reserves the right to make award on any basis deemed to be in the best interest of the Owner provided it is consistent with the Bidder's above indicated request. The Owner also reserves the right to reject any or all bids and to waive any informalities in the bidding. The Bidder also agrees that the Owner reserves the right to negotiate with the Base Bid material supplier, should the secondary or other supplier submit a lower bid for the materials, if the materials quoted are not equal to the Base Bid equipment.

It is the desire of the Owner to award this contract to a single contractor on either the basis of the Base Bid alone or in conjunction with the Additive Alternates and Deductive Alternates, whichever will be in the best interest of the Owner.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time for receiving bids. Upon receipt of written notice of the acceptance of his bid, the Bidder will execute the formal contract attached within ten (10) days and deliver a surety bond or bonds as stipulated in Paragraph 22 of the General Conditions. The bid security attached in the sum of FIVE PERCENT (5%) Dollars (\$ 93,500.⁰⁰) shall become the property of the Owner in the event the contract and bond are not executed within the time set forth as liquidated damages for the delay and additional expense to the Owner caused thereby.

All the various phases of work enumerated in the detailed specifications with their individual jobs and overhead, whether specifically mentioned, included by implication, or appurtenant thereto, are to be performed by the Contractor under the scope of one of the base/additive/deductive bids listed, irrespective of whether they are named in said list.

Payment for work performed will be in accordance with the base bid schedule, subject to changes provided for in the construction contract.

(see next page for signature requirements)

(SEAL - if Bid is by a corporation)



Respectfully submitted,

By: LEE HAMZICK Bidder
(Signature)

LEE HAMZICK
*(Printed)

Title: VICE-PRESIDENT

Business Address: _____

700 WEST ELK AVE
ELIZABETHTON, TN 37643

Telephone Number: 423.543.3181

Contractor's License Number: 69

Contractor's Monetary Limit: UNLIMITED

Expiration Date: APRIL 30TH, 2019

*Type or print name below signature.

END OF SECTION

SECTION 00411

BID BOND

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, SUMMERS TAYLOR, INC., as Principal, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, as Surety, are hereby held and firmly bound unto the City of Spring Hill, Tennessee, as Owner in the penal sum of 5% OF ATTACHED BID Dollars (\$ _____) for the payment of which well and truly to be made we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns. Signed this the 29TH day of JANUARY, 2019. The condition of the above obligation is such that whereas the Principal has submitted to the City of Spring Hill Tennessee, a certain bid, attached hereto and hereby made a part hereof to enter into a contract in writing, for the **CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK.**

NOW, THEREFORE:

- a. If said bid shall be rejected,
- b. Or in the alternate, if said bid shall be accepted and the Principal shall execute and deliver a contract in the form of contract attached hereto (properly completed in accordance with said bid) and shall furnish a bond for his faithful performance of said contract and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid,

then this obligation shall be void; otherwise, the same shall remain in force and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

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

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

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

SUMMERS TAYLOR, INC.

Principal
By: LEE HAMRICK, VP

LEE HAMRICK, VICE PRES

Print Name and Title
JANUARY 29, 2019
Date

Surety
By: FRANK E. NEAL

~~General Agent or~~
Attorney-in-Fact
FRANK E. NEAL, III
JANUARY 29, 2019
Date

(Seal)

END OF SECTION

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **MICHAEL BOND, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Frank E. NEAL, III, Mark NEAL, Brent W. NEAL, Michael B. MATTOX, Robert A. DAVIDSON, Jerri BAIN and Matthew W. KEYTON, all of Nashville, Tennessee, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York, the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

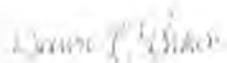
The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 27th day of August, A.D. 2018.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



By: 
Assistant Secretary
Dawn E. Brown


Vice President
Michael Bond

State of Maryland
County of Baltimore

On this 27th day of August, A.D. 2018, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **MICHAEL BOND, Vice President, and DAWN E. BROWN, Assistant Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.


Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2019



EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 29th day of January, 2019.



David McVicker

David McVicker, Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT ALL REQUIRED INFORMATION TO:

Zurich American Insurance Co.
Attn: Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056

DRUG-FREE WORKPLACE AFFIDAVIT

STATE OF TENNESSEE

COUNTY OF CARTER

As part of the City of Spring Hill's Drug Free Workplace policy, the City has adopted a drug and alcohol-testing program for its employees. The City's testing program may consist of a periodical random employee selection process. The selected employees may be tested for drug and alcohol substance abuse. Should an employee test positive for drugs or alcohol then the employee may be required to enroll and complete a drug treatment program. Should the employee be randomly selected and test positive a second time, then he could possibly be terminated. The City of Spring Hill requires that all bidders (who submit bids for the City of Spring Hill projects) submit an affidavit that the bidder operates a drug and alcohol-testing program with requirements "at least as stringent as that of the program operated by the City of Spring Hill".

The undersigned, principal officer of SUMMERS TAYLOR INC., an employer of five (5) or more employees bidding on a project for the City of Spring Hill, Tennessee government to provide construction services, hereby state under oath as follows:

1. The undersigned is a principal officer of SUMMERS TAYLOR INC. (hereinafter referred to as the "Company"), and is duly authorized to execute this Affidavit on behalf of the Company.
2. The Company submits this Affidavit pursuant to T.C.A. §50-9-113 (see attached description) and T.C.A. §50-9-114, which requires each employer with no less than five (5) employees receiving pay who bids and contracts with the state or any local government to provide construction services to submit an affidavit stating that such employer has a drug-free workplace program that complies with Title 50, Chapter 9, of the *Tennessee Code Annotated* and that is as stringent as the City of Spring Hill's program described above.
3. The Company is in compliance with T.C.A. §50-9-113 and T.C.A. §50-9-113.

Further affiant saith not.

LEE HAMRICK
Principal Officer



STATE OF TN
COUNTY OF Bradley

Before me personally appeared Lee Hamrick, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the foregoing affidavit for the purposes therein contained.

Witness my hand and seal at office this 29th day of January, 2019.

Sherri Raines
Notary Public

My commission expires: 4/20/22

50-9-113. State and local government construction contracts.

- (a) Each employer with no less than five (5) employees receiving pay who contracts with the state or any local government to provide construction services or who is awarded a contract to provide construction services or who provides construction services to the state or local government shall submit an affidavit stating that such employer has a drug-free workplace program that complies with this chapter, in effect at the time of such submission of a bid at least to the extent required of governmental entities. Any private employer that certifies compliance with the drug-free workplace program, only to the extent required by this section, shall not receive any reduction in workers' compensation premiums and shall not be entitled to any other benefit provided by compliance with the drug-free workplace program set forth in this chapter. Nothing in this section shall be construed to reduce or diminish the rights or privileges of any private employer who has a drug-free workplace program that fully complies with this chapter. For purposes of compliance with this section, any private employer shall obtain a certificate of compliance with the applicable portions of the Drug-free Workplace Act from the department of labor and workforce development. No local government or state governmental entity shall enter into any contract or award a contract for construction services with an employer who does not comply with the provisions of this section.
- (b) For the purposes of this section, "employer" does not include any utility or unit of local government. "Employer" includes any private company and/or corporation.
- (c) If it is determined that an employer subject to the provisions of this section has entered into a contract with a local government or state agency and such employer does not have a drug-free workplace pursuant to this section, such employer shall be prohibited from entering into another contract with any local government or state agency until such employer can prove compliance with the drug-free workplace program pursuant to this section. If the same employer again contracts with any local government or state agency and does not have a drug-free workplace program pursuant to this section, then such employer shall be prohibited from entering into another contract with any local government or state agency for not less than three (3) months from the date such violation was discovered and verified and shall be prohibited from entering into another contract until such employer complies with the drug-free workplace program pursuant to this section. If the same employer for a third time contracts with any local government or state agency and does not have a drug-free workplace program pursuant to this section, then such employer shall be prohibited from entering into another contract with any local government or state agency for not less than one (1) year from the date such violation was discovered and verified and shall be prohibited from entering into another contract until such employer complies with the drug-free workplace program pursuant to this section.
- (d) A written affidavit by the principal officer of a covered employer provided to a local government at the time such bid or contract is submitted stating that the employer is in compliance with this section shall absolve the local government of all further responsibility under this section and any liability arising from the employer's compliance or failure of compliance with the provisions of this section.

[Acts 2000, ch.918, §§ 1,2.]

**ATTESTATION REGARDING PERSONNEL USED IN
CONTRACT/AGREEMENT PERFORMANCE**

CONTRACTOR'S LEGAL ENTITY	
NAME AND ADDRESS:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Agreement.

SIGNATURE & DATE:

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

CITY OF SPRING HILL, TENNESSEE
CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK

INDEMNIFICATION AGREEMENT

Contracting Company

agrees to indemnify and save the Government of Spring Hill, the City of Spring Hill; Dempsey, Dilling & Associates, P.C. and subconsultants working under Dempsey, Dilling & Associates, P.C., on or off duty, officers, employees of the City of Spring Hill and of Dempsey, Dilling & Associates, P.C., harmless from any and all losses, damages and expenses, including court costs and attorneys fees, by reason of any loss, whatsoever, arising out of or in consequence of the work done in connection with the contract of which this Agreement is a part, excepting only such losses as shall be occasioned solely by the intentional negligence of the City of Spring Hill; Dempsey, Dilling, & Associates, P.C., and those subconsultants working under Dempsey, Dilling & Associates, P.C., on this project.

Contracting Company: _____

Signature of Company Officer: _____

Title: _____

Date: _____

SECTION 00514

AGREEMENT

THIS AGREEMENT, made this the _____ day of _____, 20____, by and between the City of Spring Hill of Maury County, Tennessee, acting herein through its Mayor and hereinafter called the "Owner", and _____ doing business as _____ of the City of _____, County of _____, State of _____ and hereinafter called the "Contractor".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned to be made and performed by the Owner, the Contractor hereby agrees with the Owner to commence and complete **CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK**, hereinafter included in the phrase "the Project", for the sum of _____

(\$ _____) and all extra work in connection therewith under the terms as stated in the General, Supplementary, and Special (if applicable) Conditions of the Contract and at his own and proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said Project in accordance with the conditions and at the price(s) stated in the Contractor's Bid Form and also in accordance with the General, Supplementary, and Special (if applicable) Conditions of the Contract; the plans (which include all maps, plats, blueprints, and other drawings and printed or written explanatory matter thereof); and the specifications and Contract Documents therefor, all as prepared by DEMPSEY, DILLING & ASSOCIATES, P.C., herein entitled the "A/E", all of which are made a part hereof and collectively evidence and constitute the Contract.

The Contractor hereby agrees to commence work under this Contract on or before a date to be specified in a written "Notice to Proceed" from the Owner and to complete the entire project fully within two hundred and seventy (270) consecutive calendar days thereafter for **CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK**.

The parties hereto recognize that time is of the essence of the Contract, and that the Owner will suffer financial loss if the Project is not fully complete within the period of time specified, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays,

expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the project is not complete on time. Accordingly, instead of requiring any such proof, the Owner and the Contractor agree that as liquidated damages for delay (but not for penalty), the Contractor shall pay the Owner Two Hundred Dollars (\$200.00) per day, for each consecutive calendar day that expires after the time specified for completion until the Project is complete.

The Owner agrees to pay the Contractor in current funds for the performance of the Contract, subject to additions and deductions as provided in the General Conditions and Supplementary Conditions of the Contract and only as approved by written notice from the owner. The contractor shall not be due any additional cost above said contract total amount, whether lump sum or unit cost basis, for any work performed without prior written approval from the owner regardless of any perceived agreement with any other agent of the city.

IN WITNESS WHEREOF, the parties to these presents have executed this Contract in three (3) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(SEAL)

CONTRACTOR

By _____

Attest:

Title _____

Address _____

Telephone No. _____

Contractor's License No. _____

(SEAL)

OWNER

City of Spring Hill

By _____

Attest:

Title Mayor

Address 199 Town Center Parkway

Spring Hill, TN 37174

Telephone No. (931) 486-2252

END OF SECTION

0100-393

00514-2

SECTION 00611

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we, _____
_____, a _____ hereinafter called "Principal,"
and _____ of _____, State of
_____, hereinafter called the "Surety," are
held firmly bound unto the City of Spring Hill, Tennessee ,
hereinafter called "Owner," in the penal sum of _____

(\$ _____) in lawful money of the United States,
for the payment of which sum well and truly to be made we bind
ourselves, our heirs, executors, administrators, and successors,
jointly and severally, firmly be these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas the Principal
entered into a certain Contract with the Owner, dated the _____
day of _____, 20_____, a copy of which is hereto
attached and made a part hereof for the City of Spring Hill,
Tennessee **CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK.**

NOW THEREFORE, if the Principal shall well, truly, and
faithfully perform his duties, all of the undertakings, covenants,
terms, conditions, and agreements of said Contract during the
original term thereof and any extensions thereof which may be
granted by the Owner, with or without notice to the Surety, and if
he shall satisfy all claims and demands incurred under such
Contract, shall fully indemnify and save harmless the Owner from
all costs and damages which he may suffer by reason of failure to
do so, and shall reimburse and repay the Owner all outlay and
expense which the Owner may incur in making good any default, then
this obligation shall be void; otherwise, it shall remain in full
force and effect.

PROVIDED, FURTHER, that the said Surety, for value received
hereby, stipulates and agrees that no change, extension of time, or
alteration or addition to the terms of the Contract, or to the work
to be performed thereunder or to the specifications accompanying
the same shall in any way affect its obligation on this bond, and
it does hereby waive notice of any such change, extension of time,
alteration, or addition to the terms of the Contract or to the work
or to the specifications.

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

IN WITNESS WHEREOF, this instrument is executed in three (3) counterparts, each one of which shall be deemed an original, this the ____ day of _____, 20 ____.

Principal

ATTEST:

(Principal) Secretary

By _____

(Seal)

Address _____

Witness as to Principal

Address _____

ATTEST:

(Surety) Secretary

Surety

By _____

(Seal)

Address _____

Witness as to Surety

Address _____

END OF SECTION

SECTION 00621

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we, _____
_____, a _____ hereinafter called "Principal,"
and _____ of _____, State of
_____, hereinafter called the "Surety," are
held firmly bound unto the City of Spring Hill, Tennessee ,
hereinafter called "Owner," in the penal sum of _____

(\$ _____) in lawful money of the United States,
for the payment of which sum well and truly to be made we bind
ourselves, our heirs, executors, administrators, and successors,
jointly and severally, firmly be these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas the Principal
entered into a certain Contract with the Owner, dated the _____
day of _____, 20_____, a copy of which is hereto
attached and made a part hereof for the City of Spring Hill,
Tennessee **CROSSINGS CIRCLE BRIDGE AT MCCORMICK CREEK.**

NOW, THEREFORE, if the Principal shall promptly make payment to
all persons, firms, subcontractors, and corporations furnishing
material for or performing labor in the prosecution of the work
provided for in such Contract and any authorized extension or
modification thereof (including all amounts due for materials,
lubricants, oil, gasoline, and repairs on machinery, equipment, and
tools) consumed or used in connection with the construction of such
work; for all insurance premiums on said work; and for all labor
performed in such work whether by subcontractor or otherwise, then
this obligation shall be void; otherwise it shall remain in full
force and effect.

PROVIDED, FURTHER, that the said Surety, for value received
hereby, stipulates and agrees that no change, extension of time,
alteration or addition to the terms of the Contract or to the work
to be performed thereunder or the specifications accompanying same
shall in any wise affect its obligation or this bond, and it does
hereby waive notice of any such change, extension of time,
alteration, or addition to the terms of the Contract or to the work
or to the specifications.

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

IN WITNESS WHEREOF, this instrument is executed in three (3)

counterparts, each one of which shall be deemed an original, this
the ____ day of _____, 20 ____.

ATTEST: _____
Principal

By _____

Address _____

Witness as to Principal
Address _____

ATTEST: _____
Surety

By _____

Address _____

Witness as to Surety
Address _____

END OF SECTION

SECTION 00671

CERTIFICATE OF OWNER'S ATTORNEY

I, the undersigned, _____, the duly authorized and acting legal representative of the City of Spring Hill, Tennessee, do hereby certify as follows:

I have examined the foregoing Contract and Surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf on the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with the terms, conditions, and provisions thereof.

(Signature)

(Date)

END OF SECTION

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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www.acec.org

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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.

SECTION 00813

SUPPLEMENTARY CONDITIONS

ARTICLE 1 - DEFINITIONS¹

The Owner, the Contractor, and the Engineer are those mentioned as such in the Agreement. They are treated throughout the contract documents as if each were of the singular number and masculine gender.

Wherever in this Contract the word "Engineer" is used, it shall be understood as referring to the Engineer of the Owner, acting personally or through any assistants duly authorized by the Engineer in writing to do so.

Written notice shall be deemed to have been duly served if 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 if delivered at or sent by registered mail to the last business address known to him who gives the notice.

The term "Subcontractor," as employed herein, includes only those having a direct contract with the Contractor; and it includes one who furnishes material worked to a special design according to the drawings and specifications of this work, but does not include one who merely furnishes material not so worked.

ARTICLE 2 - PRELIMINARY MATTERS

2.2.1 The Contract shall be signed in three (3) original copies by the Owner and the Contractor.

2.6.1.1 Progress Schedule

The Contractor shall, within twenty (20) days after date of award of work, prepare and submit to the Engineer for approval a practical schedule showing the order in which the Contractor proposes to carry on the work, the date on which he will start the salient features, and the contemplated dates for completing same. The schedule shall be in the form of a signed and dated progress chart of suitable scale to indicate appropriately the percentage of work schedule for completion at any time. The Contractor shall

¹Since these Supplementary Conditions are to supplement the General Conditions, articles are numbered to conform with the numbering system of the General Conditions; where a numbered article is omitted from the Supplementary Conditions, the article of that number in the General Conditions is taken to be complete and in no need of supplementation.

enter on the chart the actual progress at the time he submits his request for partial payment and shall immediately deliver to the Engineer three (3) copies thereof. If the Contractor fails to submit a progress chart at the time herein prescribed, the Owner may withhold approval of progress payment estimates until such time as the Contractor submits the required progress schedule. If, in the opinion of the Engineer and Owner, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve his progress, and the Owner may require him to increase the number of shifts or overtime operations, days at work, or the amount of construction planned, or all of these, and to submit for approval such supplementary schedules or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Owner. Failure of the Contractor to comply with requirements of the Owner under this provision shall be grounds for determination by the Owner that the Contractor is not prosecuting the work with such diligence as will ensure the completion within the time specified.

The progress schedule shall be such that it can be relied upon by the Contractor and others to coordinate testing, inspection, etc., and the sequence and interrelationship of other contracts, if any, affecting the project.

2.6.3.1 Schedule of Values

The Contractor shall also submit such other information relating to the unit and lump sum prices as may be required by the Engineer and shall revise the bid breakdown as directed by the Engineer. The breakdown will be used for checking the Contractor's applications for partial payment.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, AND REUSE

3.5.4 No oral agreement or conversation with any officer, agent, or employee of the Owner, either before or after execution of this Contract, shall affect or modify any of the terms of obligations contained in any of the documents comprising said Contract. Any changes in the scope of work which differs from the contract documents and/or the contract cost, shall be submitted in writing by the contractor for review by the owner for approval prior to any additional work taking place. Any unapproved work shall be at the expense of the contractor.

3.5.5 If the owner designates their RPR to perform construction representation rather than the Engineer's RPR, all liabilities and responsibilities of the materials, workmanship and project installation in accordance with the plans and contract documents are the responsibility of the owner.

3.5.6 Dimensions and other details shown on the drawings suitable or unsuitable for a particular manufacturer are not to be construed as being restrictive or exact. Any substitute layout, material and/or, equipment so offered for approval must be accompanied by complete and detailed layouts, specifications, data sheets, and performance record with fully dimensioned drawings. The Engineer's decision concerning compliance with specifications will be final. The contractor shall be responsible for visiting the site prior to bidding to verify all layouts, existing conditions or any other items which may affect the cost of his work and shall be included within his bid. The contractor shall notify the Engineer of any questions he may have which would affect his bid prior to submittal of his bid. Questions shall be submitted in accordance with standard procedures as identified in other sections of these specifications prior to receiving bids. The contractor will be responsible for verifying the layout, proposed materials, schedule of work or any other items he determines that may affect his work performance or the ability to complete the project within the project time and according to the drawings and specifications. No additional cost will be allowed for necessary revisions to the project scope as to allow a full and operable system.

3.6.1 Reuse of Documents

With the exception of the signed Contract, sets are to be returned to the Engineer upon request at the completion of the work.

ARTICLE 5 - BONDS AND INSURANCE

5.3 Contractor's Liability Insurance

5.3.8 Contractor's General Liability and Automobile Liability Insurance: The Contractor will furnish the Owner with proof of insurance coverage under a general liability insurance policy and an automobile liability insurance policy, both of which will be of the comprehensive form. The insurance shall protect the insured from claims for damages because of bodily injury (including accidental death) and from claims for property damage (including loss of use resulting there from). This insurance shall include the specific coverage and be written for not less than the limits set out below. In addition, the Contractor will furnish an Owner's protective policy similar to that specified herein.

General Liability:

- | | |
|---|-------------|
| 1. Bodily injury or death - each occurrence | \$1,000,000 |
| 2. Bodily injury or death - aggregate | 1,000,000 |
| 3. Property damage - each occurrence | 500,000 |
| 4. Property damage - aggregate | 500,000 |
| 5. Personal injury - aggregate | 500,000 |

Automobile Liability (including owned, hired, and non-owned):		
1.	Bodily injury or death - each person	\$1,000,000
2.	Bodily injury or death - each occurrence	1,000,000
3.	Property damage - each occurrence	500,000

5.3.9 Subcontractor's General Liability and Automobile Liability Insurance: The Contractor shall either (1) require each of his Subcontractors to procure and to maintain, during the life of their sub-agreement, insurance as specified in Article 5.3 of the Supplementary Conditions, or (2) insure the activities of his Subcontractor(s) in his own insurance policy.

5.3.10 Scope of Insurance and Special Hazards: The insurance required under Subparagraphs 5.3.8 and 5.3.9 hereof shall provide adequate protection for the Contractor and his Subcontractors against any or all damage claims that may arise out of or result from operations under the requirements of the contract documents whether such operations be by the insured or anyone directly or indirectly employed by him, and also against any of the special hazards (such as explosion and collapse of underground hazards) that may be encountered in the performance of the work called for by the contract documents.

5.3.11 Proof of Carriage of Insurance: The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates, and dates of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be cancelled or materially altered except after a thirty (30) day written notice has been received by the Owner."

5.3.13 Contractor's and Subcontractor's Insurance: The Contractor shall not commence work under this Contract until he has obtained all the insurance required under this section and such insurance has been approved by the Owner, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until the insurance required of the Subcontractor has been so obtained and approved.

5.6.1 Property Insurance

Insurance listed under Section 5.6 of the Standard General Conditions of the Contract shall be purchased and maintained by the Contractor.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.20.4 Protection of Lives and Health

In accordance with generally accepted construction practices,

the Contractor will be solely and completely responsible for conditions at the job site, including the safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.3.1 Project Representation

General: Resident Project Representative (RPR) is the Engineer's agent at the site, will act as directed by and under the supervision of the Engineer, and will confer with the Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with the Engineer and Contractor, keeping the Owner advised as necessary. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of the Contractor. RPR shall generally communicate with the Owner with the knowledge of and under the directions of the Engineer. If the owner provides construction representation with their own staff or representative then all liabilities and project installation workmanship and materials inspections of the project installation are the responsibility of the owner. The owner's representative shall also assume the following responsibilities as acting RPR.

9.3.2 Duties and Responsibilities of RPR

The Resident Project Representative shall:

9.3.2.1 Schedules: Review the progress schedule, the schedule of shop drawing submittals and schedule of values prepared by the Contractor; and consult with the Engineer concerning acceptability.

9.3.2.2 Conferences and Meetings: Attend meetings with the Contractor, such as preconstruction conferences, progress meetings, job conferences and other project related meetings and prepare and circulate copies of minutes thereof.

9.3.2.3 Liaison:

a. Serve as the Engineer's liaison with the Contractor, working principally through the Contractor's superintendent; and assist in understanding the intent of the contract documents; and assist the Engineer in serving as the Owner's liaison with the Contractor when the Contractor's operations affect the Owner's on-site operations.

b. Assist in obtaining from the Owner additional details or information, when required for proper execution of the work.

9.3.2.4 Shop Drawings and Samples:

- a. Record date of receipt of shop drawings and samples.
- b. Receive samples which are furnished at the site by the Contractor, and notify the Engineer of availability of samples for examination.
- c. Advise the Engineer and Contractor of the commencement of any work requiring a shop drawing or sample if the submittal has not been approved by the Engineer.

9.3.2.5 Review of Work, Rejection of Defective Work, Inspections, and Tests

- a. Conduct on-site observations of the work in progress to assist the Engineer in determining if the work is in general proceeding in accordance with the contract documents.
- b. Report to the Engineer whenever the RPR believes that any work is unsatisfactory, faulty, or defective or does not conform to the contract documents or has been damaged or does not meet the requirements of any inspections, test, or approval required to be made; and advise the Engineer of work that the RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- c. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that the Contractor maintains adequate records thereof; observe, record, and report to the Engineer appropriate details relative to the test procedures and start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the project; record the outcome of these inspections; and report to the Engineer.

9.3.2.6 Interpretation of Contract Documents: Report to the Engineer when clarifications and interpretations of the contract documents are needed and transmit to the Contractor clarifications and interpretations as issued by the Engineer.

9.3.2.7 Modifications: Consider and evaluate the Contractor's suggestions for modifications in the drawings or specifications and report with the RPR's recommendations to the Engineer. Transmit to the Contractor decisions as issued by the Engineer.

9.3.2.8 Records:

- a. Maintain at the job site orderly files for correspondence, reports of job conferences, shop drawings and samples, reproductions of original contract documents including all work directive changes, addenda, change orders, field orders, and

additional drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the contract documents, progress reports, and other project related documents.

b. Keep diary, daily reports, or log book recording Contractor hours on the job site, weather conditions, data relative to questions of work directive changes, change orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail, as in the case of observing test procedures; and send copies to the Engineer.

c. Record names, addresses and telephone numbers of all Contractors, Subcontractors, and major suppliers of materials and equipment.

9.3.2.9 Reports:

a. Furnish the Engineer as required with periodic reports of the progress of the work and of the Contractor's compliance with the approved progress schedule, schedule of shop drawing and sample submittals.

b. Consult with the Engineer in advance of scheduled major tests, inspections, or start of important phases of the work.

c. Draft proposed change orders and work directive changes, obtaining backup material from the Contractor and recommend to the Engineer change orders, work directive changes, and field orders.

d. Report immediately to the Engineer and Owner upon the occurrence of any accident.

9.3.2.10 Payment Requests: Review applications for payment with the Contractor for compliance with the established procedure for their submission and forward with recommendations to the Engineer, noting particularly the relationship of the payment requested to the schedule of values, work completed and materials and equipment delivered at the site but not incorporated in the work.

9.3.2.11 Certificates, Maintenance and Operation Manuals: During the course of the work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by the Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to the Engineer for review and forwarding to the Owner prior to the final payment for the work.

9.3.2.12 Completion:

a. Before the Engineer issues a Certificate of Substantial

Completion, submit to the Contractor a list of items requiring completion or correction.

b. Conduct final inspection in the company of the Engineer, Owner, and Contractor and prepare a final list of items to be completed or corrected.

c. Observe that all items on final list have been completed or corrected and make recommendations to the Engineer concerning acceptance.

9.3.3 Limitations of Authority: The RPR shall not:

a. Authorize any deviation from the contract documents or substitution of materials or equipment, unless reviewed by Engineer, and approved by owner.

b. Exceed limitations of the Engineer's authority as set forth in the Contract Documents;

c. Undertake any of the responsibilities of the Contractor, Subcontractors, or the Contractor's superintendent;

d. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the contract documents;

e. Advise on, issue directions regarding or assume control over safety precautions and programs in connection with the work;

f. Accept shop drawings or sample submittals from anyone other than the Engineer;

g. Authorize the Owner to occupy the project in whole or in part;

h. Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the Engineer.

ARTICLE 10 - CHANGES IN THE WORK

10.1 The Contractor, in connection with any proposal he makes, shall furnish a price breakdown, itemized as required by the Owner or Engineer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the change order, whether such work was deleted, added, or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. The proposal shall include a breakdown of all costs on behalf of the

Contractor and his subcontractors and suppliers for all costs and markup directly or indirectly attributable to the change(s) ordered, for all delays related thereto, and for performance or the change within the time frame stated. In addition, if the proposal includes a time extension request, a justification therefore shall also be furnished. The proposal, together with price breakdown and time extension justification, shall be furnished by the date specified to the Owner or Engineer. The Engineer and the owner may require above described cost breakdown submittal from the contractor for any change order proposal whether the work is listed as a unit cost item or a lump sum cost, as to allow proper consideration of change order request. The contractor is not guaranteed the amount listed in the unit cost bid items or lump sum cost for submitted change order request. The Engineer and owner shall review the contractor's actual documented costs in recommendation or denial of change order requests. Any proposed changes in the scope of work shall be submitted to the Engineer for recommendation of approval or denial, reviewed by the owner and approved or denied, and transmitted to the Engineer. The Engineer will then notify the contractor of such requests. Any proposed changes in the work or project costs shall be approved in writing by the owner prior to commencement of any such changes. Should the contractor commence any work not approved by the owner in writing then the contractor shall bear the cost of all such work at his own expense.

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

13.2.1 Access to the Work

Right of entry shall be guaranteed at all times on any project site(s) described in the contract documents. Entry shall be guaranteed to any representative of the Tennessee Department of Transportation, the Tennessee Department of Conservation and Environment, and any other Federal, State or local agency having jurisdiction.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.4.1 Review of Application for Progress Payments

The Engineer will check the Contractor's estimate, and the Owner will make payment to the Contractor promptly and retain only such amounts as may be justified by specific circumstances and provisions of the federal grant or the construction Contract. The amount due will be determined by the completed work and material stored on site less previous payments.

Retained amounts shall be limited to the following:

1. Withholding of not more than 5% of the payment claimed until work is complete;

2. When the work is substantially complete (operational or beneficial occupancy), the withheld amount may be further reduced below 5% to only that amount necessary to ensure completion.

3. The Owner may accept securities negotiable without recourse, condition, or restrictions; a release of retainage bond; or an irrevocable letter of credit provided by the Contractor in lieu of all or part of the cash retainage.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.6 Removal of Equipment

In the case of termination of this Contract for any cause whatever before completion, the Contractor, if notified to do so by the Owner, shall promptly remove any part or all of his equipment or supplies from the property of the Owner, failing which the Owner shall have the right to remove such equipment and supplies at the expense of the Contractor.

END OF SECTION

RESOLUTION 19-175

**A RESOLUTION AUTHORIZING A CONTRACT AMENDMENT TO DEDUCT THE
FORM LINER FINISH FROM THE CROSSINGS CIRCLE BRIDGE NORTH
PROJECT**

WHEREAS, the City of Spring Hill is currently constructing the bridge at Crossings Circle North with Summers Taylor, Inc. at a total construction cost (including water system improvement) of \$2,008,624.00 as reflected in Resolution 19-27; and

WHEREAS, the City desires to reduce costs and complete the bridge in a timely fashion; and

WHEREAS, the form liner finish is proposed to be removed from the scope of work for the bridge project and a deduction is offered by the contractor reducing costs by \$14,240.00 and revising the completion date to November 30, 2019 from December 5th, 2019.

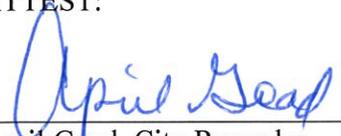
NOW, THEREFORE BE IT RESOLVED, that the City of Spring Hill Board of Mayor and Aldermen approve the deductive change order and authorize the Mayor to execute documentation for the removal of the form liner finish from scope of work for the Crossings Circle Bridge North Project resulting in a reduction in the total project cost by \$14,240.00 and revising the completion date to November 30, 2019.

Passed and Adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee on the 16th day of September, 2019.



Rick Graham, Mayor

ATTEST:



April Goad, City Recorder

LEGAL FORM APPROVED:



Patrick Carter, City Attorney



REQUEST: Authorize amendment to current contract with Summers Taylor, Inc for removal of the form liner finish from the Crossings Circle North Bridge Project

SUBMITTED BY: Chip Moore, Infrastructure Director

DATE: September 11, 2019

RE: Crossing Circle North Bridge Form Liner

ATTACHMENTS: Photos and Specifications

PURPOSE:

To discuss and approve an amendment to the current contract with Summer Taylor to remove the form liner finish from the scope of work at a cost savings of \$14,250 and to amend the project completion date from December 5, 2019 to November 30, 2019.

BACKGROUND:

Staff has been presented by Summer Taylor, the contractor constructing the bridge project, with a deductive change order to remove from the scope of work the form liner finish from the exterior of the bridge. This will remove the ribbed designed finish in the contracted scope of work and replace that finish with a standard textured bridge finish. The view of the bridge structure from US-31 is very limited so the change in finish will not negatively impact aesthetic considerations. The deductive change order will result in a reduction in overall cost of the bridge project of \$14,250 and a shortening of the schedule by one week from December 5, 2019 to November 30, 2019.

FINANCIAL IMPACT:

The deductive change order offered is a cost reduction of \$14,250.00.

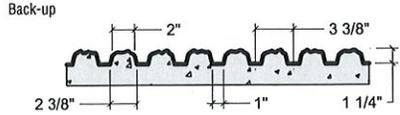
STAFF RECOMMENDATION:

Should the Board desire to amend the project by removing the form liner finish as outlined in the deductive change order, the Board should favorably approve Resolution 19-175 to authorize the deductive change order to remove the form liner finish from the scope of work and replace same with a spray textured finish resulting in a cost reduction of \$14,250 and a reduction in the completion schedule from December 5, 2019 to November 30, 2019.

Fractured Designs

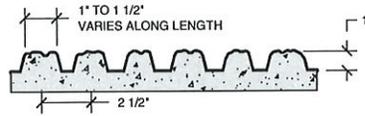
No. 347 U,M,D,UL

(Optional closed or open ends, open end sheets are 9'-9")
 3'-11 1/2" x 10' Sheets • Trapezoid with
 Aggregate Face



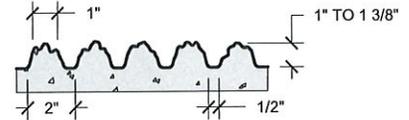
No. 366 U,M,D,UL

3'-11 1/4" x 10' Sheets • Fractured Rib



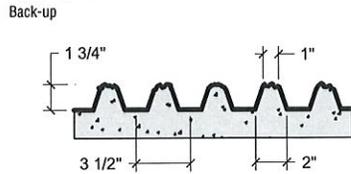
No. 367 U,M,D,UL

4' x 10' Sheets • Fractured Rib VA D.O.T.



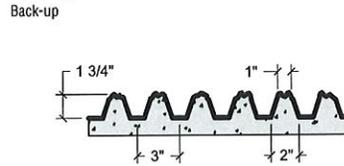
No. 368 U,M,D,UL

4'-1" x 10' Sheets • Trapezoid with
 Aggregate Face



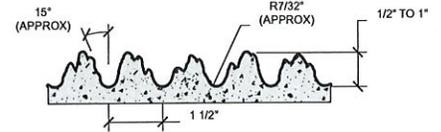
No. 369 U,M,D,UL

4' x 10' Sheets • Trapezoid with
 Aggregate Face



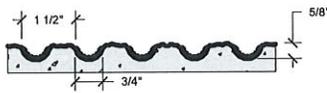
No. 373 U,M,D,UL

4' x 10' Sheets • Fractured Fin
 Available with ribs rotated 45°



No. 374 U,M,UL

4' x 10' Sheets • Ripped Rope



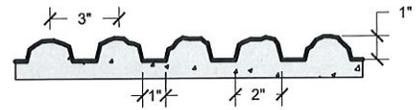
No. 376 U,M,UL

4' x 10' Sheets • Fractured Granite

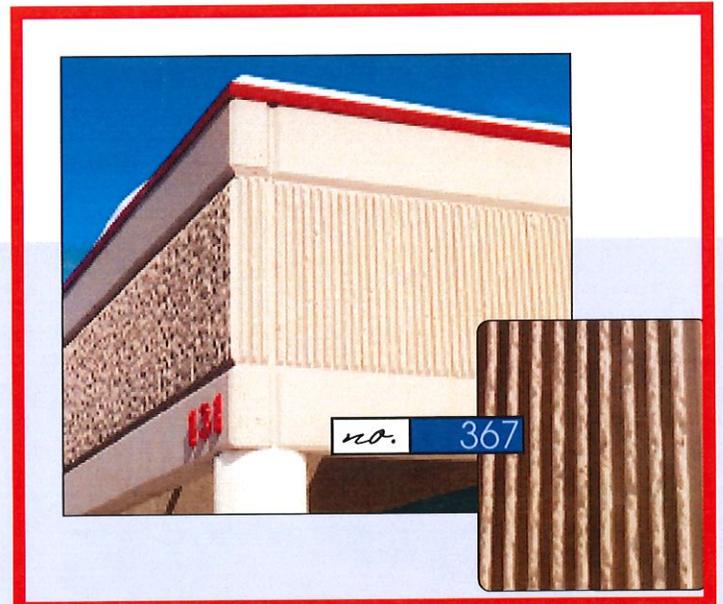


No. 475 U,M,UL

4' x 10' Sheets • Large Fractured Trapezoid



no. 373



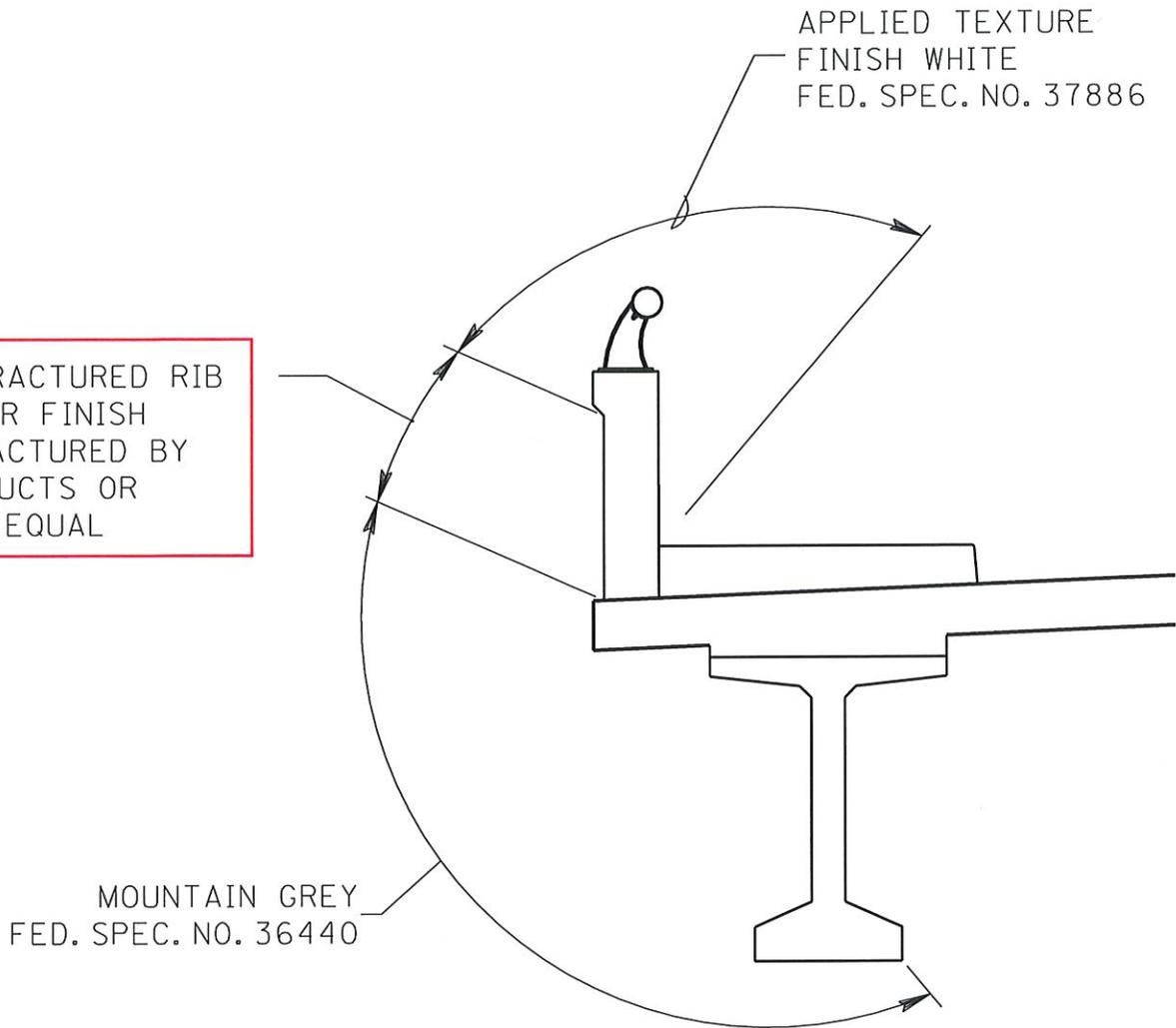
no. 367

(Not all patterns are shown in this catalog.)
 All dimensions nominal

☒ This symbol indicates patterns recommending back-up strips. Please refer to the section of this catalog regarding back-up strips for additional information.

Not all patterns are available in all grades. Grades available for each pattern detail are designated as follows:

U Uni-Cast® M Multi-Cast® D Dura-Cast® UL Ultra-Cast™



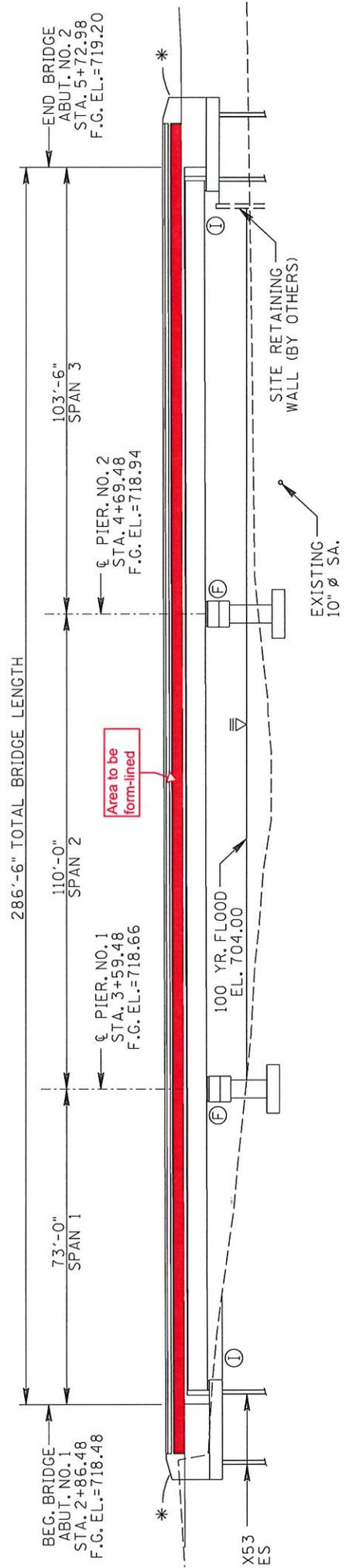
APPLIED TEXTURE FINISH DETAIL

NOTES:

ALL COST OF TEXTURE COATING AND FORM LINER FINISH SHALL BE INCLUDED IN ITEM NO. 604-04.01.

IN ADDITION TO THE SURFACES SHOWN IN THE APPLIED TEXTURE FINISHED DETAIL SKETCH, ALL EXPOSED SURFACES OF THE WINGWALL, ABUTMENT BEAMS, CONCRETE PIERS, AND EXTERIOR PORTIONS OF ENDWALLS AND RETAINING WALLS ARE TO RECEIVE AND APPLIED TEXTURE FINISH (MOUNTAIN GREY, FED. SPEC. NO. 36440).

TEXTURE COATING OF ALL AREAS DESIGNATED SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS.



ELEVATION VIEW

SCALE: 1"=20'

(I): DENOTES INTEGRAL

(E): DENOTES INTEGRAL

*: INDICATES GUARDRAIL ATTACHMENT REQUIRED.