

PROJECT MANUAL

CITY OF BLOOMINGTON UTILITIES

**MILLER SHOWERS DREDGING
AND DISPOSAL**

150 W 17th St, Bloomington, IN 47404

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BLOOMINGTON, INDIANA

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ADVERTISEMENT FOR BIDS

MILLER SHOWERS DREDGING AND DISPOSAL

150 W 17th St, Bloomington, IN 47404

NOTICE IS HEREBY GIVEN THAT THE UTILITIES SERVICE BOARD OF THE CITY OF BLOOMINGTON, INDIANA WILL RECEIVE SEALED BIDS FOR THE BELOW- DESCRIBED WORK AT THE LOCATION INDICATED.

The City of Bloomington Utilities (CBU) has the responsibility for the operation and maintenance of the detention pools at the Miller Showers area for the purpose of stormwater management. This includes dredging as needed to maintain storm water capacities and periodic maintenance on the sediment traps. These storm water pools must be dredged to maintain their hydraulic capacity. The solids removed must be dried to a range from 21%- 23% solids content and transported to a permitted landfill. Total quantity to remove is assumed to be about 2,900 cubic yards.

Sealed bids shall be received by the Utilities Department, at 600 E. Miller Drive, Bloomington, Indiana, 47401, at or before 4:00 PM local time on January 09, 2024. Any bids received after the designated time will be returned unopened. Bids will be publicly opened and read aloud at a special Utilities Service Board meeting, which begins at 4:00 PM local time on January 09, 2024. Bids will be reviewed after the meeting and the award may be made at the following regular Utilities Service Board meeting on January 16, 2024 or a subsequent meeting of the Board.

All Bids must be in accordance with the Bidding Documents contained in the project documents on file with the Director of Utilities, City of Bloomington, 600 E. Miller Dr. Bloomington, Indiana 47401. Project documents are available for inspection only at the City of Bloomington Utilities office.

Complete digital project bidding documents are available for download at <https://bloomington.in.gov/utilities/bids>. Paper sets of the project documents will also be made available for inspection only at the City of Bloomington Utilities office.

Neither the Owner or Engineer has any responsibility for the accuracy, completeness or sufficiency of any bid documents obtained from any other source other than the sources listed herein. Obtaining these documents from any other source(s) may result in obtaining incomplete and inaccurate information. Obtaining these documents from any other source other than directly from the sources listed herein may also result in failure to receive addenda, corrections, or other revisions to the Bidding Documents that may be issued.

A **pre-bid conference** will be held on **December 28, 2023 from 10:00 a.m. to 12:00 p.m.** to familiarize Bidders with this Project. The meeting will be held in person at City of Bloomington Utilities, 600 E. Miller Drive, Bloomington, in the Board Meeting Room.

Miller Showers Dredging and Disposal
150 W 17th St, Bloomington, IN 47404

ADVERTISEMENT FOR BIDS

Each Bidder shall file with his or her sealed bid:

- 1) Proposal Form – completed and signed;
- 2) Form 96 (Revised 2013), "Contractors Bid For Public Works", including Non-Collusion Affidavit, completely executed, signed, and notarized as prescribed by the Indiana State Board of Accounts, and Section III of Part II of Form 96 titled, "Contractor's Financial Statement";
- 3) Bidder's Qualifications as described in Sections I and II of Part II of Form 96 and other information that may be appropriate.
- 4) Bid Security: Acceptable Bidder's bond or certified check drawn on an acceptable bank in an amount of not less than 5% of the total bid price;
- 5) A properly executed Employee Drug Testing Program Affidavit for a public works project estimated to cost at least \$150,000;
- 6) A properly executed An E-Verify affidavit;
- 7) City of Bloomington Living Wage Ordinance Affidavit
- 8) City of Bloomington Responsible Bidder Affidavit;
- 9) Any other items listed in the Instructions to Bidders.

For bids of \$100,000.00 or more, the successful bidder shall furnish performance and payment bonds for one hundred percent (100%) of the contract amount prior to the execution of the contract, and said bonds shall remain in effect for a period of one (1) year after final acceptance of the work.

Each Bidder must ensure that to the greatest extent feasible, opportunities for training and employment should be given to lower income residents of the project area and purchases and/or contracts for work in connection with the project should be awarded to small business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.

The City of Bloomington is an equal opportunity employer, and Bidder shall meet all requirements for equal employment under Title VII of the 1964 Civil Rights Act as amended and under the Bloomington Human Rights Ordinance, as amended.

Each Bidder for proposals over \$10,000.00 shall submit and have approved by the City of Bloomington Contract Compliance Officer, Audrey Brittingham, his/her written Affirmative Action Plan at least twenty-four (24) hours prior to the deadline for submission of bid. Each Bidder must insure that all employees and applicants for employment are not discriminated against because of race, religion, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status. All the protected classes must be included in your Affirmative Action Plan for it to be acceptable. In addition to other requirements, your plan MUST include a workforce breakdown, an internal grievance procedure, a non-retaliation statement, designation of a person by name or position who is responsible for implementation of the Plan, applicability to both applicants and employees, recruitment of minorities, equal access to training programs, and an explanation of your method of communicating the operations of your affirmative action plan to employees and prospective applicants. For Affirmative Action Plan information and approval only, contact the Contract Compliance Officer, at (812) 349-3426, 8:00 a.m. to 5:00 p.m. Monday through

Friday. All other project inquiries should be directed to Katherine Zaiger, City of Bloomington Director of Environmental Programs, at (812) 349-3656 or katherine.zaiger@bloomington.in.gov

In accordance with Indiana Code 4-13-18-5, each Contractor that submits a bid for a public works project that is estimated to cost \$150,000 or more shall submit with his/her bid a written plan for an employee drug testing program to test the employees of the Contractor and Subcontractors for drugs.

The Utility Service Board reserves the right to waive any informality and to accept or reject any or all bids submitted. Bids may be held by the Utility Service Board for a period not-to-exceed ninety (90) days from the date of the opening of Bids for the purpose of reviewing the Bids, investigating the qualifications of the Bidders prior to awarding the contract, and awarding the contract.

Utilities Service Board, City of Bloomington, Indiana
Amanda Burnham, President

INSTRUCTIONS TO BIDDERS

ARTICLE 1 - DEFINED TERMS

1.01. Terms used in these Instructions to Bidders shall have the meanings assigned to them in the General Conditions and in the Supplementary Conditions. Additional terms used in these Instructions to Bidders shall have the meanings indicated below, which are applicable to both the singular and plural thereof.

- A. Bidder - The individual or entity who submits a Bid directly to Owner.
- B. Successful Bidder - The lowest qualified, responsible, and responsive Bidder to whom Owner (on the basis of Owner's evaluation as herein provided) makes an award.

ARTICLE 2 - QUALIFICATIONS OF BIDDERS

2.01. Each Bid must contain evidence of Bidder's authority and qualification to do business in the State of Indiana. Evidence shall consist of a certification from the state in accordance with IC 4-13.6-4 or IC 8-23-10 if the value of the contract is greater than \$300,000.

2.02. The City of Bloomington is an equal opportunity employer, and Bidder shall meet all requirements for equal employment under Title VII of the 1964 Civil Rights Act as amended and under the Bloomington Human Rights Ordinance, as amended.

2.03. A Contract for Work under this Bid shall obligate the Contractor and Subcontractors not to discriminate in employment practices. Each Bidder for proposals over \$10,000.00 shall submit an Affirmative Action Plan and a Harassment Plan to the City Legal Department. The requirements for the submittal, approval and contents of these plans are fully detailed in the Local Forms section of the Contract Documents. Bidders who fail to submit an acceptable Affirmative Action Plan and an acceptable Harassment Plan by the deadline are subject to disqualification. Contract Compliance Officer may be contacted at (812) 349-3426, 8:00 am to 5:00 pm Monday through Friday.

2.04. A Contract for Work under this Bid shall obligate the Contractor and Subcontractors to comply with the City of Bloomington Living Wage Ordinance.

2.05. A Contract for Work under this Bid shall obligate the Contractor and Subcontractors to comply with the City of Bloomington Responsible Bidder Ordinance.

2.06. In accordance with Indiana Code 4-13-18-5, each Contractor that submits a bid for a public works project that is estimated to cost \$150,000 or more shall submit with his/her bid a written plan for an employee drug testing program to test the employees of the Contractor and Subcontractors for drugs.

2.07. All bidders seeking to do business with the City of Bloomington Utilities must enroll in, and verify, the work eligibility status of newly hired employees of the Contractor through the United States government's E-Verify program. A declaration form must be submitted with the bid documents.

2.08. In accordance with Indiana Code 36-1-12-20, if project may require creation of a trench of at least five (5) feet in depth, a City of Bloomington Trench Safety Compliance Affidavit must be executed.

2.09. To demonstrate Bidder's qualifications to perform the Work, Owner also requires Bidders to submit a performance record, giving a description, location and telephone numbers of contacts on similar projects constructed by the Bidder. Include in this list projects currently under contract, the approximate contract amount, and a percent of completion of each project, and a list of any contracts defaulted.

ARTICLE 3 - COPIES OF BIDDING DOCUMENTS

3.01. The Bidding Documents, including Specifications, are on file for inspection at the City of Bloomington Utilities, 600 East Miller Drive, Bloomington, Indiana. Copies of any type will not be made available. Complete digital project bidding documents are available for download at <https://bloomington.in.gov/utilities/bids>.

3.02. Complete sets of Bidding Documents must be used in preparing Bids; Owner and Engineer will assume no responsibility for errors or misrepresentations resulting from the use of incomplete sets of Bidding Documents.

3.03. Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

3.04. Neither Owner nor Engineer has any responsibility for the accuracy, completeness or sufficiency of any bid documents obtained from any source other than the source indicated in these documents. Obtaining these documents from any other source(s) may result in obtaining incomplete and inaccurate information. Obtaining these documents from any source other than directly from the source listed herein may also result in failure to receive any addenda, corrections, or other revisions to these documents that may be issued.

ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS AND SITE

4.01. On request 24 hours in advance, Owner will provide each Bidder access to the Site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations. Arrangements for Site visits shall be made by contacting Katherine Zaiger, City of Bloomington Utilities Assistant Director of Environmental Programs, at (812) 349-3656 or katherine.zaiger@bloomington.in.gov.

4.02. Project location:

On property owned by City of Bloomington, generally described as Miller Showers Park between College and Walnut Streets extending from 17th St to 19th St.

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

- A. Examine and carefully study the Bidding Documents, including any Addenda and other related data identified in the Bidding Documents;
- B. Visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. Become familiar with and satisfy Bidder as to all Federal, state, and local Laws and Regulations that may affect cost, progress, or performance of the Work;
- D. Correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
- E. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
- F. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

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

ARTICLE 5 - PRE-BID CONFERENCE

5.01. An in-person pre-bid conference will be held prior to the Bid opening on **December 28, 2023, 2023 at 10:00 a.m.** to familiarize Bidders with this Project. The meeting will be held in person at City of Bloomington Utilities, 600 E. Miller Drive, Bloomington, in the Board Meeting Room. Representatives of OWNER/ENGINEER and DESIGNER will be present to discuss the Project. Impacted utilities are also invited to attend and describe their relocation work. Bidders are encouraged to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 6 - INTERPRETATIONS AND ADDENDA

6.01. All questions about the meaning or intent of the Contract Documents are to be directed in writing to the Assistant Director (Katherine Zaiger at katherine.zaiger@bloomington.in.gov). Interpretations or clarifications considered necessary by the Assistant Director in response to such questions will be issued by Addenda posted at least three days prior to the receipt of Bids (January 09) on the City's

website at <https://bloomington.in.gov/utilities/bids>. Questions received less than seven days prior (January 2 at 4PM) to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding upon the Owner. Oral and other interpretations or clarifications will be without legal effect.

6.02. Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer.

ARTICLE 7 - BID SECURITY

7.01. Each Bid must be accompanied by Bid Security made payable without condition to Owner in an amount of five percent (5%) of Bidder's maximum Bid and in the form of a certified check, bank check, or a bid bond issued by a surety meeting the requirements set forth in the Supplementary Conditions. The bid bond, if used, shall be submitted on the form included in the Bidding Documents.

7.02. The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and to furnish the required contract security within the number of days set forth in the Bid Form, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited, The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of 7 days after the Effective Date of the Agreement or the day after the last day the Bids remain subject to acceptance as set forth in the Bid Form, whereupon Bid security furnished by such Bidders will be returned.

7.03. The Bid Security of other Bidders, whom Owner believes to have a reasonable chance of receiving the award, may be retained by Owner for a period of 90 days after the Bid opening. The Bid Security of each unsuccessful Bidder will be returned when his/her Bid is rejected.

ARTICLE 8 - CONTRACT TIMES

8.01. The numbers of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the Contract Times) are set forth in the Bid Form.

ARTICLE 9 - LIQUIDATED DAMAGES

9.01. Provisions for liquidated damages are set forth in the Standard Form of Agreement and Supplementary Conditions which is a part of the Bid Documents.

ARTICLE 10 - SUBSTITUTE AND "OR-EQUAL" ITEMS

10.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or those substitute or "or-equal" materials and equipment approved by Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed substitute or "or-equal" item. No item of material or equipment will be considered by Engineer as a substitute or "or-equal" unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 days prior to the date for receipt of Bids. Each such request shall conform to the requirements of Article 7.04 of the General

Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

ARTICLE 11 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS

11.01. If the Bidding Documents require the identity of certain Subcontractors, Suppliers, and other individuals or entities to be submitted to Owner, each Bidder shall submit to Owner with its Bid the List of Subcontractors, completed with the names of all such Subcontractors, Suppliers, and other individuals and entities proposed for those portions of the Work for which such identification is required. The list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity, if requested by Owner. If, after due investigation, Owner or Engineer has reasonable objection to any proposed Subcontractor, Supplier, or other individual or entity, Owner may, before the Notice of Award is given, request the apparent Successful Bidder to submit an acceptable substitute without an increase in the Bid amount.

11.02. If the apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, and other individuals and entities. Declining to make requested substitutions will not constitute grounds for sacrificing the bid security of any Bidder. Any Subcontractor, Supplier, or other individual or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer, subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Article 7.06 of the General Conditions.

11.03. Contractor shall not be required to employ any Subcontractor, individual, or entity against whom Contractor has a reasonable objection.

11.04. Any Bid conditioned upon furnishing equipment or materials which are not responsive to the Bidding Documents will be rejected.

ARTICLE 12 - PREPARATION OF BIDS

12.01. The Proposal form is included with the Bidding Documents. All Bids shall be submitted on this form.

12.02. All blanks in the Proposal form shall be legibly completed with ink or by typewriter.

12.03. Bidders shall submit a Bid on a Lump Sum Base Bid basis as set forth in the Proposal form.

12.04. A Bid by a corporation shall be executed in the corporate name by the president or the vice-president or by another corporate officer, accompanied by evidence of authority to sign for the corporation. The corporate address and state of incorporation shall be shown below the signature.

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

13.06. A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown below the signature.

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

12.08. The names of all persons signing shall be legibly printed or typed below their signatures.

12.09. The Bid shall contain an acknowledgment of receipt of all Addenda, the Addenda numbers and dates of which shall be filled in on the Proposal Form.

12.10. The address and telephone number for communications regarding the Bid shall be given.

ARTICLE 13 – SUBMISSION OF BIDS

13.01. Bids shall be submitted no later than the time and at the place indicated in the Advertisement for Bids, or at the modified time and place indicated by Addendum.

13.02. Bids shall be enclosed in an opaque, sealed envelope or wrapping, addressed to:

Office of the Director
City of Bloomington Utilities
600 E. Miller Drive
Bloomington, Indiana 47401

13.03. Bid envelopes or packages shall be marked with the name and address of the Bidder. In addition each shall be identified on the outside with the words "Bid for Clear Creek Culvert Reconstruction, Dunn Street to Indiana Avenue".

13.04. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "SEALED BID ENCLOSED" on the face of it.

13.05. Oral, telephone, facsimile, electronic mail, or telegraph Bids are invalid and will not receive consideration.

13.06. No Bidder may submit more than one Bid. Multiple Bids under different names will not be accepted from one firm or association.

13.07. Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids. Bids received after the time and date for receipt of Bids will be returned unopened.

13.08. Each Bid package is to include the following:

- A. Proposal Form – completed and signed
- B. Form 96 (Revised 2013), "Contractors Bid For Public Works", including Non-Collusion Affidavit, completely executed, signed, and notarized as prescribed by the Indiana State Board of Accounts, and Section III of Part II of Form 96 titled, "Contractor's Financial Statement"

- C. Evidence of Bidder's authority and qualification to do business in the State of Indiana. Evidence shall consist of a certification from the state in accordance with IC 4-13.6-4 or IC 8-23-10 if the value of the contract is greater than \$300,000 for all Tier 1 contractors.
- D. Bidder's Qualifications as described in Sections I and II of Part II of Form 96 and other information that may be appropriate.
- E. Bid Security - acceptable Bidder's bond or certified check in an amount of not less than 5% of the total Bid price
- F. City of Bloomington Living Wage Ordinance form – Completed form
- G. City of Bloomington Responsible Bidder Affidavit form – Completed form
- H. Trench Safety Compliance Affidavit form – Completed if applicable
- I. Employee Drug Testing Compliance Affidavit form – Completed form
- J. E-Verify Affidavit form – Completed form

ARTICLE 14 - MODIFICATION OR WITHDRAWAL OF BID

14.01. A Bid 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 prior to the date and time for the opening of Bids.

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

ARTICLE 15 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

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

ARTICLE 16 - OPENING OF BIDS

16.01. Bids will be publicly opened at the time and place indicated in the Advertisement for Bids and, unless obviously non-responsive, read aloud. A Tabulation of Bids and alternatives, if any, will be made available to Bidders after they have been reviewed by the Engineer.

ARTICLE 17 - EVALUATION OF BIDS

17.01. Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Owner to make an award to that Bidder. Owner also reserves the

right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.

17.02. More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

17.03. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

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

17.05. In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.

17.06. Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work in accordance with the Contract Documents.

17.07. If the Contract is to be awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Owner.

17.08. Owner also may consider the operating costs, maintenance requirements, performance data, and guarantees of major items of materials and equipment proposed for incorporation in the Work.

ARTICLE 18 - AWARD OF CONTRACT

18.01. If the Contract is to be awarded, it will be awarded to the lowest responsive and responsible Bidder whose evaluation by Owner indicates to the Owner that the award will be in the best interests of the Owner.

ARTICLE 19 - FORFEITURE OF BID SECURITY

19.01. In the event the party to whom the Contract is awarded shall fail or neglect to execute the Agreement and furnish satisfactory bonds within 15 days after the Owner has notified him that the Agreement is ready for execution, the Owner may determine that the Bidder abandoned the Agreement and thereupon the Bid and acceptance shall be null and void; and the security accompanying the Bid shall be forfeited to and retained by the Owner as liquidated damages for such failure and neglect, and to indemnify the Owner for any loss which may be sustained by failure of the Bidder to execute the Agreement. After the execution of the Agreement and the acceptance of the bonds by the Owner, the Bid Securities, in the form of a check, which have been retained by the Owner shall be returned to the respective Bidders.

ARTICLE 20 – SIGNING OF AGREEMENT

20.01. When Owner issues a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement. Within 15 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within 15 days thereafter, Owner shall deliver two fully signed counterparts to Successful Bidder (one for surety provider) and the Notice to Proceed document.

ARTICLE 21 - CONTRACT SECURITY AND INSURANCE

21.01. Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bond and insurance documents.

ARTICLE 22 - SALES AND USE TAXES

22.01. Owner is exempt from Indiana state sales and use taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Bid. Refer to Paragraph SC-7.09 of the Supplementary Conditions for additional information.

ARTICLE 23 – RETAINAGE

23.01. Provisions concerning retainage are set forth in the Agreement.

ARTICLE 24 - LOCAL MATERIALS

24.01. Preference will be given to materials, products, supplies, and all other articles produced, manufactured, made, or grown in the State of Indiana.

PROPOSAL FORM

MILLER SHOWERS DREDGING AND DISPOSAL
150 W 17th St, Bloomington, IN 47404

THIS BID IS SUBMITTED TO:

City of Bloomington Utilities
Office of the Director
600 E. Miller Dr.
Bloomington, Indiana 47401

Pursuant to the published "Advertisement for Bids", the undersigned has investigated the conditions affecting the cost of the proposed Miller Showers Dredging and Disposal at 150 W 17th St, Bloomington, IN 47404 and having examined the site and understanding the requirements set forth in the Contract Documents, hereby proposes to provide and furnish all labor, materials, tools, equipment, and all utility and transportation services necessary to perform and complete, in a workmanlike manner, all work as required by said Contract Documents, including any and all addenda now on file in the City of Bloomington Utilities, 600 East Miller Drive, Bloomington, Indiana 47401.

LUMP SUM BASE BID

The undersigned proposes to furnish all work for the Miller Showers Dredging and Disposal at 150 W 17th St, Bloomington, IN 47404, including the furnishing of all labor, materials, supplies, equipment and all appurtenances necessary to complete the work as per the Scope of Work, including the Contingency Allowance amount, for the lump sum base Bid amount of

_____ dollars and _____ cents
(Price in Words)

(\$ _____)
(Price in Numerals)

CONTINGENCY ALLOWANCE

The above lump sum base Bid amount includes a contingency allowance for repairs, temporary and other unanticipated work. The contingency allowance amount included in the above lump sum base Bid is **\$25,000.00**. Payment shall only be made for the actual cost of work performed by the Contractor or a subcontractor plus allowable mark-ups based on a signed change order with the Owner. If the entire amount is not expended by the end of the contract the Contract Price will be reduced by the appropriate amount by Change Order.

SUPPLEMENTAL UNIT PRICES

The Contractor shall provide a price for all work as listed below. In all cases, the Work shown or reasonably implied by the plans is assumed to be included in the Lump Sum Base Bid. Supplemental Unit prices shall be used to address variations from the planned quantities either as an addition or deduct. Where the plans are not sufficient to establish the assumed quantities for a type of work, the assumed quantity is listed herein:

1. The following Unit Prices shall include all costs necessary for the complete installation of the materials or items indicated, including materials, labor, equipment, operations, administration, overhead, and profit.
2. These Unit Prices are submitted as a price per unit of measurement for materials or services added to or deducted from the Contract Sum by appropriate modification, if estimated quantities of Work required by the Contract Documents are increased or decreased.
3. The quantity of each item that is assumed to be part of the Base Bid is that quantity which is shown or clearly implied on the Plans or Specifications.

1. Hydraulic Dredging (includes removal of rock other objects that might be trapped in sediment)(Note that the first 2900 CYS of this Work is to be included in the Base Bid)	CYS	\$
2. Dewatering (the first 2900 CYS of this work is to be included in Base Bid)	CYS	\$
3. Material Pumping of hydraulically dredged material (1200 LFT is included in Base Bid)	LFT	\$
4. Loading and Hauling of dewatered material (1880 CY of this is to be included in the Base Bid)	CYS	\$
5. Disposal of dewatered material (1880 CY of this is to be included in the Base Bid)	LFT	\$
6. Snow fence (for protection of disposal site)	SYS	\$
7. Silt fence (to be installed downstream of geotextile bags)	SYD	\$

CONTRACT TIMES

The undersigned further agrees that the Work covered by this Proposal will be Substantial Complete within the following numbers of calendar days after the date when Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions. Final Completion shall mean Work is completed and ready for final payment in accordance with Article 15 of the General Conditions.

Substantial Completion shall be defined as the completion of all dredging of the two southernmost ponds with all dredged material in geotextile bags, with all equipment and materials used for dredging removed from the ponds, and any damage done by said equipment (not including geotextile bags) restored.

	<u>Substantial Completion</u>	<u>Final Completion</u>
All Work included in the Contract Documents	180	257

DESIGNATION OF INTENDED SUBCONTRACTORS

Any and all Subcontractors performing work valued over \$10,000 shall be listed below. Any subcontractor not listed below at the time of bid, must be approved by the City of Bloomington prior to performing any work on this contract. Subcontractors not listed or approved will not be paid for work under this contract. In accordance with Indiana Code 5-16-13 *et seq.*, incorporated herein by reference, any subcontractor performing work on this contract is a Tier 2 contractor.

The Proposal, as submitted, is based upon the following Subcontractors (Enter Subcontractor information):

TRADE / SERVICE	COMPANY NAME	TELEPHONE NO.

BID SECURITY

The undersigned encloses herewith a certified check payable to the City of Bloomington, or an acceptable bidder's bond binding the undersigned and surety to the City of Bloomington, Indiana, in the amount of

_____ dollars and cents
(Price in Words)

(\$ _____)
(Price in Numerals)

which amount is not less than five percent (5%) of the LUMP SUM BASE BID as set out above, guaranteeing that the undersigned will enter into Contract for the performance of the work if this Proposal is accepted.

ATTACHMENTS TO THIS BID

1. Form 96, "Contractors Bid For Public Works" as prescribed by the Indiana State Board of Accounts, including Section III of Part II "Contractor's Financial Statement" is properly executed and attached hereto. A Non-Collusion Affidavit, as required by the statutes of the State of Indiana, is properly executed and included in Section IV of Part II of Form 96. Bidders Qualifications as described in Sections I and II of part II of Form 96 shall be completed in their entirety.
2. The Responsible Bidder Affidavit is attached.
3. The Compliance Affidavit Regarding Indiana Code Chapter 4-13-18 Drug Testing Of Employees of Public Works Contractors is attached including a copy of the written plan for employee drug testing.
4. Evidence of Bidder's authority and qualification to do business in the state of Indiana. Evidence shall consist of a certification from the state in accordance with IC 4-13.6-4 or IC 8-23-10 if the value of the contract is greater than \$300,000.
5. Trench Safety Compliance Affidavit form – Completed if applicable
6. E-Verify Affidavit form – Completed form
7. City of Bloomington Living Wage Ordinance form – Completed form

It is hereby agreed that this proposal shall remain in full force and effect and may not be withdrawn for a period of 90 days from the date of receiving proposals by the City of Bloomington Utilities.

Receipt of Addenda is hereby acknowledged (Enter all Addendums by number and date):

No. _____ Dated _____

No. _____ Dated _____

Respectfully submitted,

(Company Name)

Individual Partnership Corporation

By: _____
(Signature of authorized person)

(Printed Name)

Date: _____

NOTE: The legal status of the Bidder, whether as an individual, partnership, or corporation, must be indicated above, and all pertinent information as required by the Contract Documents must be furnished.

Communications concerning this Bid shall be sent to Bidder at the following address:

E-Mail: _____

BID OF

(Contractor)

(Address)

FOR

PUBLIC WORKS PROJECTS

OF

Filed _____

Action taken _____



CONTRACTOR'S BID FOR PUBLIC WORK - FORM 96

State Form 52414 (R2 / 2-13) / Form 96 (Revised 2013)

Prescribed by State Board of Accounts

PART I

(To be completed for all bids. Please type or print)

Date (month, day, year): _____

1. Governmental Unit (Owner): _____

2. County : _____

3. Bidder (Firm): _____

Address: _____

City/State/ZIPcode: _____

4. Telephone Number: _____

5. Agent of Bidder (if applicable): _____

Pursuant to notices given, the undersigned offers to furnish labor and/or material necessary to complete the public works project of _____

(Governmental Unit) in accordance with plans and specifications prepared by _____

_____ and dated _____ for the sum of

The undersigned further agrees to furnish a bond or certified check with this bid for an amount specified in the notice of the letting. If alternative bids apply, the undersigned submits a proposal for each in accordance with the notice. Any addendums attached will be specifically referenced at the applicable page.

If additional units of material included in the contract are needed, the cost of units must be the same as that shown in the original contract if accepted by the governmental unit. If the bid is to be awarded on a unit basis, the itemization of the units shall be shown on a separate attachment.

The contractor and his subcontractors, if any, shall not discriminate against or intimidate any employee, or applicant for employment, to be employed in the performance of this contract, with respect to any matter directly or indirectly related to employment because of race, religion, color, sex, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the contract.

CERTIFICATION OF USE OF UNITED STATES STEEL PRODUCTS

(If applicable)

I, the undersigned bidder or agent as a contractor on a public works project, understand my statutory obligation to use steel products made in the United States (I.C. 5-16-8-2). I hereby certify that I and all subcontractors employed by me for this project will use U.S. steel products on this project if awarded. I understand that violations hereunder may result in forfeiture of contractual payments.

ACCEPTANCE

The above bid is accepted this _____ day of _____, subject to the following conditions: _____

Contracting Authority Members:

PART II

(For projects of \$150,000 or more — IC 36-1-12-4)

Governmental Unit: _____

Bidder (Firm) _____

Date (month, day, year): _____

These statements to be submitted under oath by each bidder with and as a part of his bid. Attach additional pages for each section as needed.

SECTION I EXPERIENCE QUESTIONNAIRE

1. What public works projects has your organization completed for the period of one (1) year prior to the date of the current bid?

Contract Amount	Class of Work	Completion Date	Name and Address of Owner

2. What public works projects are now in process of construction by your organization?

Contract Amount	Class of Work	Expected Completion Date	Name and Address of Owner

3. Have you ever failed to complete any work awarded to you? _____ If so, where and why?

4. List references from private firms for which you have performed work.

SECTION II PLAN AND EQUIPMENT QUESTIONNAIRE

1. Explain your plan or layout for performing proposed work. *(Examples could include a narrative of when you could begin work, complete the project, number of workers, etc. and any other information which you believe would enable the governmental unit to consider your bid.)*

2. Please list the names and addresses of all subcontractors *(i.e. persons or firms outside your own firm who have performed part of the work)* that you have used on public works projects during the past five (5) years along with a brief description of the work done by each subcontractor.

3. If you intend to sublet any portion of the work, state the name and address of each subcontractor, equipment to be used by the subcontractor, and whether you will require a bond. However, if you are unable to currently provide a listing, please understand a listing must be provided prior to contract approval. Until the completion of the proposed project, you are under a continuing obligation to immediately notify the governmental unit in the event that you subsequently determine that you will use a subcontractor on the proposed project.

4. What equipment do you have available to use for the proposed project? Any equipment to be used by subcontractors may also be required to be listed by the governmental unit.

5. Have you entered into contracts or received offers for all materials which substantiate the prices used in preparing your proposal? If not, please explain the rationale used which would corroborate the prices listed.

SECTION III CONTRACTOR'S FINANCIAL STATEMENT

Attachment of bidder's financial statement is mandatory. Any bid submitted without said financial statement as required by statute shall thereby be rendered invalid. The financial statement provided hereunder to the governing body awarding the contract must be specific enough in detail so that said governing body can make a proper determination of the bidder's capability for completing the project if awarded.

BID BOND

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

BIDDER (*Name and Address*):

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

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name— Include Location*):

BOND

Bond Number:

Date:

Penal sum _____ \$ _____

(Words)

(Figures)

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

BIDDER

SURETY

(Seal)

(Seal)

Bidder's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 1.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 1.2 All Bids are rejected by Owner, or
 - 1.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

Responsible Bidder Affidavit

Contractor and any subcontractor performing more than \$150,000 worth of work on the project shall complete this *Responsible Bidder Affidavit* as required by Chapter 2.29 of the Bloomington Municipal Code. Contractor must submit this affidavit with its bid. Failure to comply with all submission requirements may result in a determination that the Contractor is not a responsible and responsive bidder.

The undersigned _____, as _____ and on behalf of
(Name) (Title)
 _____ certifies the following:
(Contractor)

Contractor is compliant with all applicable laws pre-requisite to doing business in Indiana.

Yes [] No []

Does Contractor have a Federal Employer Identification Number (EIN) (also known as a Federal Tax Identification Number)?

Yes [] No []

Please list your Federal Employer Identification Number: _____

Alternatively, for sole proprietors, list your social security number: _____

Contractor is in compliance with Section 2000(e) of Chapter 21, Title 42 of the United States Code and Federal Executive Order Number 11375 (known as the Equal Opportunity Employer Provisions).

Yes [] No []

Contractor has submitted an affirmative action plan as required under § 2.21.070(8) of the Bloomington Municipal Code.

Yes [] No []

Contractor affirms that all of its workers who qualify as employees are covered under a current worker’s compensation insurance policy, and that all workers who will be part of the project are properly classified as employees or independent contractors.

Yes [] No []

Contractor will comply with Indiana Code § 5-16-7 et. seq., known as the Indiana Common Construction Wage Act.

Yes [] No []

Contractor confirms that any of its employees designated as apprentices are properly registered with an apprenticeship and training program approved and registered with the United States Department of Labor, Bureau of Apprenticeship and Training.

Yes [] No []

Contractor currently has a substance abuse testing policy in place.

Yes [] No []

Please list any professional or trade license(s) required by law for any trade or specialty area required to complete work on the present project.

Has the Contractor, or any directors, officers, or managers employed by the Contractor, had any professional or trade license suspended or revoked within the last five (5) years?

Yes [] No []

Verification

I certify that I am authorized to execute this affidavit on behalf of the Contractor set forth above, that I have personal knowledge of all the information set forth herein, and that all statements representations, and information contained in this affidavit are true and accurate.

Signature of Authorized Officer

Name of Authorized Officer

Title

Date

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 20_____.

My Commission Expires: _____ Signature of Notary Public

County of Residence: _____ Printed Name of Notary Public

**BIDDER'S AFFIDAVIT IN COMPLIANCE WITH IC 36-1-12-20 TRENCH SAFETY SYSTEMS;
COST RECOVERY**

STATE OF INDIANA)
) SS:
COUNTY OF _____)

AFFIDAVIT

The undersigned, being duly sworn, hereby affirms and says that:

1. The undersigned is the _____ of
(job title)

(company name).
2. The undersigned is duly authorized and has full authority to execute this Bidder's Affidavit.
3. The company named herein that employs the undersigned:
 - i. has contracted with or seeking to contract with the City of Bloomington to provide services; or
 - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
4. By submission of this Bid and subsequent execution of a Contract, the undersigned Bidder certifies that as successful Bidder (Contractor) all trench excavation done within his/her control (by his/her own forces or by his/her Subcontractors) shall be accomplished in strict adherence with OSHA trench safety standards contained in 29 C.F.R. 1926, Subpart P, including all subsequent revisions or updates to these standards as adopted by the United States Department of Labor.
5. The undersigned Bidder certifies that as successful Bidder (Contractor) he/she has obtained or will obtain identical certification from any proposed Subcontractors that will perform trench excavation prior to award of the subcontracts and that he/she will retain such certifications in a file for a period of not less than three (3) years following final acceptance.
6. The Bidder acknowledges that included in the various items listed in the Schedule of Bid Prices and in the Total Amount of Bid Prices are costs for complying with I.C. 36-1-12-20. The Bidder further identifies the costs to be summarized below*:

	Trench Safety Measure	Units of Measure	Unit Cost	Unit Quantity	Extended Cost
A.					
B.					
C.					
D.					
				Total	\$ _____

(Continued Next Page)

Method of Compliance (Specify) _____

Date: _____, 20____

Signature

Printed Name

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared
_____ and acknowledged the execution of the
foregoing this _____ day of _____, 2024.

My Commission Expires: _____

Signature of Notary Public

County of Residence: _____

Printed Name of Notary Public

E-Verify AFFIDAVIT

STATE OF INDIANA)
)SS:
COUNTY OF _____)

AFFIDAVIT

The undersigned, being duly sworn, hereby affirms and says that:

1. The undersigned is the _____ of _____.
(job title) (company name)
2. The company named herein that employs the undersigned:
 - i. has contracted with or seeking to contract with the City of Bloomington to provide services; or
 - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

Signature

Printed Name

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 2024.

My Commission Expires: _____

Signature of Notary Public

County of Residence: _____

Printed Name of Notary Public

AGREEMENT

THIS AGREEMENT, executed by and between the City of Bloomington, Indiana, Utilities Department through the Utilities Service Board (hereinafter referred to as City), and _____ (hereinafter referred to as Contractor);

WITNESSETH THAT:

WHEREAS, City desires to retain Contractor's services for Scope of Work, more particularly described in Attachment "A", "Scope of Work"; and

WHEREAS, Contractor is capable of performing work as per his/her Bid on the Bid Proposal Form; and

WHEREAS, in accordance with Indiana Code § 5-16-13 *et seq.*, incorporated herein by reference, Contractor is a Tier 1 or General Contractor for this project; and

WHEREAS, Contractor was determined to be the lowest responsible and responsive Bidder for said project.

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree as follows:

ARTICLE 1: TERM

This Agreement shall be in effect upon execution of this Agreement by all parties. In accordance with Indiana Code 5-16-13 *et seq.*, incorporated herein by reference, Contractor is a Tier 1 contractor or general contractor for this project.

ARTICLE 2: ENGINEER

Engineer shall mean the City of Bloomington Utilities and its designated project manager, who will act as the City's representatives and assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3: WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents and as generally described in Attachment A, "Scope of Work", attached hereto, subject to any additions or deductions as provided in the Contract Documents.

ARTICLE 4: CONTRACT PRICE

City shall pay the Contractor for performance of the Work in accordance with the Contract Documents and subject to any additions or deductions as provided in the Contract Documents.

Contractor acknowledges that the above contract amount includes an unallocated contingency amount of **\$25,000** that is under the control of the Engineer and will only be authorized for expenditure in whole or in part after a change order is issued by the Owner.

City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:

Defective work.

Evidence indicating the probable filing of claims by other parties against Contractor which may adversely affect City.

Failure of Contractor to make payments due to subcontractors, material suppliers or employees.

Damage to City or a third party.

The submission of any request for payment shall be deemed a waiver and release by Contractor of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.

Contractor shall maintain proper account records for the scope of all services of this Agreement and provide an accounting for all charges and expenditures as may be necessary for audit purposes. All such records shall be subject to inspection and examination by City's representatives at reasonable business hours.

ARTICLE 5: CONTRACT TIMES, LIQUIDATED DAMAGES, DELAYS, AND DAMAGES

5.1. Contract Times. The Work to be performed under this Contract shall commence on a date to be specified in a written Notice to Proceed order from the City. Subject to extensions of time granted in writing by City, in its sole discretion, the Work shall be Substantially Complete within **180** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **257** days after the date when the Contract Times commence to run.

Prior to commencement of the construction Work, the Contractor shall furnish to the City satisfactory evidence of the adequate bond and insurance coverage and that all other conditions of the Contract Documents required to be performed prior to starting Work have been complied with by the Contractor.

5.2. Liquidated Damages. City and Contractor recognize that time is of the essence of this Agreement and that City will suffer financial loss if the Work is not completed within the times specified in Paragraph 5.1 above, plus any extensions thereof allowed in accordance with Article 11 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 City if the Work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay City the following amount for each calendar day that expires after the times specified in Paragraph 5.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times specified or any proper extension thereof granted by City, Contractor shall pay City the following amounts for each day that expires after the times specified in Paragraph 5.1 for completion and readiness for final payment:

<u>Item</u>	<u>Liquidated Damages, per calendar day</u>
Substantial Completion of the Work	\$500.00
Final Completion of all Work	\$500.00

City shall have the right to deduct the liquidated damages from retainage or other money in its hands, otherwise due, or to become due, to Contractor, or to initiate applicable dispute resolution procedures and recover liquidated damages for nonperformance of this Contract within the time stipulated.

ARTICLE 6: PAYMENT PROCEDURES

Contractor shall submit Application for Payment in accordance with Article 15 of the General Conditions. Application for Payment will be processed by the Engineer as provided in General Conditions and Supplementary Conditions.

6.1. Progress Payments. City shall make payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on a monthly basis during performance of the Work. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in Paragraph 2.05 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

ARTICLE 7: RETAINAGE

Pursuant to Indiana Code, Section 36-1-12-14, contracts in excess of Two Hundred Thousand Dollars (\$200,000.00) are required to provide for retainage between the City and the Contractor. For contracts in excess of \$100,000 and for which Contractor requests Progressive Payments, the Owner also requires that retainage be held as set out below.

7.1. Escrow Agent. The retainage amount withheld shall be placed in an escrow account. First Financial Bank dba Yellow Cardinal, Bloomington, Indiana, shall serve as the escrow agent, subject to compliance with 7.2 below.

7.2. Retainage Amount. The escrow agent, City and Contractor shall enter into a written escrow agreement. Under that agreement, the City shall withhold five percent (5%) of the dollar value of all work satisfactorily completed until the Contract work is substantially complete. The escrow agent shall invest all escrowed principal in obligations selected by the escrow agent. The escrow agent shall be compensated for the agent's services by a reasonable fee, agreed upon by the parties, that is comparable with fees charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrow income. The escrow agent's fee may be determined by specifying an amount of interest the escrow agent will pay on the escrowed amount, with any additional earned interest serving as the escrow agent's fee. The escrow agreement may include other terms and conditions as deemed necessary by the parties.

7.3. Payment of Escrow Amount. The escrow agent shall hold the escrowed principal and income until receipt of the notice from the City and Contractor that the Contract work has been substantially completed to the reasonable satisfaction of the City, at which time the City shall pay to the Contractor the balance to be paid under this Contract and execute such documents as are necessary to authorize the escrow agent to pay to the Contractor the funds in the escrow account, including both specifying the part of the escrowed principal to be released from the escrow and the person to whom that portion is to be released. After receipt of the notice, the escrow agent shall remit the designated part of the escrowed principal and the escrowed income, minus the escrow agent's fees, to the person specified in the notice. However, nothing in this section shall prohibit City from requiring the escrow agent to withhold amounts necessary to complete minor items of the Contract, following substantial completion of the Contract in accordance with the provisions of paragraph 7.4.

7.4. Withholding Funds for Completion of Contract. If, upon substantial completion of the Contract, there still remains minor Contract work that needs to be completed, or minor Contract work that needs to be performed to the satisfaction of the City, City may direct the escrow agent to retain in the escrow account, and withhold from payment to the Contractor, an amount equal to two hundred percent (200%) of the value of said work. The value of said work shall be determined by the Engineer. The escrow agent shall release the funds withheld under this section after receipt of notice from the City that all work on the Contract has been satisfactorily completed. In the event that said work is not completed by the Contractor, but by City or another party under contract with the City, said funds shall be released to the City.

ARTICLE 8: ENUMERATION OF CONTRACT DOCUMENTS

The Contract Documents, which constitute the entire agreement between the City and Contractor, are incorporated herein by reference, made a part hereof and enumerated as follows:

1. This Agreement and its Attachments A, B, C, and D
2. All written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Paragraph 3.04 of the General Conditions, which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto
3. All Addenda to the Bid Documents
4. Advertisement for Bidders
5. Instructions to Bidders
6. Contractor's Bid and supporting documents submitted with the bid
7. Bid Bond
8. Performance and Payment Bonds
9. Standard General Conditions
10. Supplementary Conditions
11. Local Contract and Bidding Documents as listed in the Table of Contents
12. Notice of Award
13. Notice to Proceed
14. Specifications
15. Drawings
16. Submittals
17. Escrow Agreement

There are no Contract Documents other than those listed in this article. The Contract Documents may be amended, modified, or supplemented only as provided in Article 11 of the General Conditions.

In resolving conflicts, errors, discrepancies and disputes concerning the Work to be performed by Contractor, and other rights and obligations of City and Contractor, the document expressing the greater quantity, quality or other scope of work in question, or imposing the greater obligation upon Contractor and affording the greater right or remedy to City shall govern; otherwise the documents shall be given precedence in the order as enumerated above.

ARTICLE 9: GENERAL PROVISIONS

9.1. Contractor agrees to comply with all federal, state, and local laws, rules and regulations applicable to Contractor in performing work pursuant to this Agreement, including, but not limited to, discrimination in employment, prevailing wage laws, conflicts of interest, public notice, accounting records and requirements. This Agreement shall be governed by the laws of the United States, and the State of Indiana, and by all Municipal Ordinances and Codes of the City of Bloomington. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

9.2. Contractor agrees to indemnify and hold harmless City and its officers, agents, officials and employees for any and all claims, actions, causes of action, judgments and liens arising out of any negligent act or omission by Contractor or any of its officers, agents, officials, employees, or subcontractors or any defect in materials or workmanship of any supply, materials, mechanism or other product or service which it or any of its officers, agents, officials, employees, or subcontractors has supplied to City or has used in connection with this Agreement and regardless of whether or not it is caused in part by a party indemnified herein under. Such indemnity shall include attorney's fees and all costs and other expenses arising there from or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein.

9.3. In the event of a breach of this Contract by Contractor, City shall be entitled to pursue any and all remedies available, both legal and equitable, under the laws of the State of Indiana. In addition to any other remedy to which City may be entitled upon a breach by Contractor, City shall be entitled to recover from Contractor the reasonable expenses incurred by City, including attorney fees, in enforcing this Contract.

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

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

9.6. The business address of Contractor given herein and the address of Contractor's office in the vicinity of the Work are both hereby designated as the places to which all notices, letters, and other communication to Contractor will be mailed or delivered. The address of City appearing herein is hereby designated as the place to which all notices, letters, and other communication to City shall be mailed or delivered. Either party may change its address at any time by an instrument in writing delivered to City and to the other party.

9.7. Both parties agree that for the purpose of this Agreement, Contractor shall be an independent contractor and not an employee of City.

9.8. Non-Discrimination.

- A. Contractor and sub-Contractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, training, conditions or privileges of employment, because of race, sex, color, religion, national origin, ancestry, disability, sexual orientation, gender identity, veteran status, or housing status. Breach of this covenant may be regarded as a material breach of the Agreement.
- B. Contractor certifies for itself and all its sub-Contractors compliance with existing laws of the City of Bloomington, the State of Indiana and the United States regarding:
 - 1. Prohibition of discrimination in employment practices on the basis of race, sex, color, religion, national origin, ancestry, disability, sexual orientation, gender identity, veteran status, housing status or any other legally protected classification;
 - 2. The utilization of Minority and Women Business Enterprises. Contractor further certifies that it:
 - a. Has formulated its own Affirmation Action plan for the recruitment, training and employment of minorities and women, including goals and timetable; which has been approved by the City's Contract Compliance Officer.
 - b. Encourages the use of small business, minority-owned business and women-owned business in its operations.
 - 3. FURTHER, PURSUANT TO INDIANA CODE § 5-16-6-1, Contractor AGREES:
 - a. That in the hiring of employees for the performance of work under this Agreement or any sub agreement hereunder, no Contractor, or sub-Contractor, nor any person acting on behalf of such Contractor or sub-Contractor, shall by reason of race, sex, color, religion, national origin, ancestry, or any other legally protected classification, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates.
 - b. That no Contractor, sub-Contractor, or any person on their behalf, shall, in any manner, discriminate against or intimidate any employee hired for performance of work under

this Agreement on account of race, religion, color, sex, national origin, ancestry or any other legally protected classification.

- c. That there may be deducted from the amount payable to Contractor, by City, under this Agreement, penalty of Five Dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement. Any such person discriminated against retains the right to file a discrimination complaint with the appropriate civil rights agency or court.
- d. That this Agreement may be canceled or terminated by City and all money due or to become hereunder may be forfeited, for a second or any subsequent violations of the terms or conditions under this section of the Agreement.

9.9. Safety.

1. Contractor shall be responsible for the safety of employees at all times and shall provide all equipment necessary to insure their safety. Contractor shall ensure the enforcement of all applicable safety rules, regulations, ordinances and laws, whether federal, state or local. Contractor's Superintendent of Safety shall make daily inspections upon the arrival and leaving of the site at the close of each workday.
2. Contractor is required to comply with IOSHA regulations 29 C.F.R 1926, Subpart P, Excavations for all trenches of at least five (5) feet in depth. All cost for trench safety systems shall be the responsibility of the Contractor and included in the cost of the principal work with which the safety systems are associated. Contractor's affidavit, submitted with his bid, affirms that Contractor shall maintain compliance with IOSHA requirements for excavations of at least five (5) in depth.
3. Contractor shall indemnify and hold harmless City and its officers, agents, officials and employees for any and all damages, actions, costs, (including, but not limited to, attorney's fees, court costs and costs of investigation) judgments and claims by anyone for damage to property, injury or death to persons resulting from the collapse or failure of any trenches, ditches or other excavations constructed under or associated with this contract.

9.10. Steel or Foundry Products.

1. To comply with Indiana Code § 5-16-8, affecting all contracts for the construction, reconstruction, alteration, repair, improvement or maintenance of public works, the following provision shall be added: If steel or foundry products are to be utilized or supplied in the performance of any contract or subcontract, only domestic steel or foundry products shall be used. Should City feel that the cost of domestic steel or foundry products is unreasonable; City will notify Contractor in writing of this fact.
2. Domestic Steel products are defined as "Products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two (2) or more of such operations, from steel made in the United States by open hearth, basic oxygen, electric furnace, Bessemer or other steel making process."
3. Domestic Foundry products are defined as "Products cast from ferrous and nonferrous metals by foundries in the United States."
4. The United States is defined to include all territory subject to the jurisdiction of the United States.
5. City may not authorize or make any payment to Contractor unless City is satisfied that Contractor has fully complied with this provision.

9.11 Verification of Employees' Immigration Status

1. Contractor is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). Contractor's affidavit, submitted with his bid, affirms that Contractor does not knowingly employ an unauthorized alien. "Unauthorized alien" is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8 U.S. Code Chapter 12 or by the U.S. Attorney General.
2. Contractor and any of its sub-Contractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Contractor or any of its sub-Contractors learns is an unauthorized alien. If the City obtains information that the Contractor or any of its sub-Contractors employs or retains an employee who is an unauthorized alien, the City shall notify the Contractor or its sub-Contractors of the Agreement violation and require that the violation be remedied within thirty (30) calendar days of the date of notice. If the Contractor or any of its sub-Contractors verify the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that the Contractor or its sub-Contractor did not knowingly employ an unauthorized alien. If the Contractor or its sub-Contractor fails to remedy the violation within the thirty (30) calendar day period, the City shall terminate the Agreement, unless the City determines that terminating the Agreement would be detrimental to the public interest or public property, in which case the City may allow the Agreement to remain in effect until the City procures a new Contractor. If the City terminates the Agreement, the Contractor or its sub-Contractor is liable to the City for actual damages.
3. Contractor shall require any sub-Contractors performing work under this Agreement to certify to the Contractor that, at the time of certification, the sub-Contractor does not knowingly employ or contract with an unauthorized alien and the sub-Contractor has enrolled in and is participating in the E-Verify program. Contractor shall maintain on file all sub-Contractors' certifications throughout the term of this Agreement with the City.

9.12. Drug Testing Plan.

1. In accordance with Indiana Code 4-13-18 as amended, the Contractor was required to submit with his/her bid a written drug testing policy for a public works project that is estimated to cost \$150,000 or more. Among other things, the law sets forth specific requirements that must be in the plan for a program to test the employees of the Contractor and Subcontractors for drugs. The successful Contractor must comply with all provisions of the statute. This contract is subject to cancellation if Contractor fails to implement its testing program during the term of this contract, fails to provide information regarding this testing at the request of City; or provides false information to City regarding Contractor's employee drug testing program. Contractor's affidavit, submitted with his bid, affirms that Contractor has and shall implement Contractor's employee drug testing program throughout the term of this project.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands.

CITY: CITY OF BLOOMINGTON, INDIANA
UTILITIES SERVICE BOARD

Date: _____, 2024

By: _____
Amanda Burnham
President, Utilities Service Board

John Langley
Interim Director of Utilities

John Hamilton
Mayor of Bloomington

City address for giving notices:

PO Box 1216
Bloomington, IN 47402

CONTRACTOR: _____

Date: _____, 2024

By: _____
Authorized Contractor Representative

Printed Name

Title of Contractor Representative

Contractor address for giving notices:

ATTACHMENT A

SCOPE OF WORK

MILLER SHOWERS DREDGING AND DISPOSAL

150 W 17th St, Bloomington, IN 47404

Hydraulically dredge 5.56 acres of open water in two ponds at Miller Showers Park to remove excess sediment. Pump water from the dredging project into four 100-foot by 30-foot geotextile sediment tubes located east of the stream north of the two ponds before releasing the water back into an Unnamed Tributary to Griffy Creek. After completion of the dredging the material will need to be dewatered to a range from 21% to 23% solids content and must be able to be disposed of in a traditional landfill. The contractor must keep records of loads of material removed. The dewatered solids must then be transported to a final disposal location APPROVED BY THE CITY within a 75-mile radius of the disposal area. All specifications in the associated 401 WQC permit must be followed.

REQUIRED LOCAL FORMS

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

City of Bloomington

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

- Individual/sole proprietor or single-member LLC
- C Corporation
- S Corporation
- Partnership
- Trust/estate
- Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____
- Other (see instructions) ▶ **Municipal Government**

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3).

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

401 N Morton Street

PO Box 100

6 City, state, and ZIP code

Bloomington, IN 47404

Bloomington, IN 47402-0100

7 List account number(s) here (optional)

Requester's name and address (optional)

Print or type.
See Specific Instructions on page 3.

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
			-				-		
or									
Employer identification number									
3	5		-	6	0	0	0	9	5
									4

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here

Signature of U.S. person ▶ Jeffrey H. Underwood, CPA

Digitally signed by Jeffrey H. Underwood, CPA
 DN: cn=Jeffrey H. Underwood, o=City of Bloomington, ou=City of the
 Question, email=junderwood@bloomington.gov, postalCode=47404
 Date: 2023.01.04 11:58:00 -0500

Date ▶ 1/4/2023

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.



CITY OF BLOOMINGTON ELECTRONIC FUNDS TRANSFER FORM (EFT)

THE CITY'S REQUIRED METHOD OF PAYMENT IS EFT
 (Electronic Funds Transfer)
PLEASE COMPLETE THE SECTION BELOW TO ENROLL



EFT INFORMATION

Bank Name:	
Type of Account:	<input type="checkbox"/> Checking <input type="checkbox"/> Savings
Routing Number:	
Account Number:	
Name of Account:	
Email for Payment Notification:	

REFERENCES FOR SOLE PROPRIETORS & PARTNERSHIPS

Name:	Address:
Phone:	Email:
Name:	Address:
Phone:	Email:
Name:	Address:
Phone:	Email:

BILLING INFORMATION

Payment Remittance		
Address (PO Box)		
Address (Physical)		
City	State	Zip
Person to Contact		
Email		
Phone		

AUTHORIZATION CERTIFICATE



ADVISORY GROUP | a first financial company

First Financial Bank dba Yellow Cardinal
Advisory Group ("Yellow Cardinal")

Client Name ("Entity"):	
Type of Entity:	
Principal Address:	
Tax ID:	
Account:	

THE UNDERSIGNED HEREBY CERTIFIES TO YELLOW CARDINAL:

- 1) That (S)he is authorized, in his/her position as Secretary/President/Member/Manager/General Partner (as applicable) of the Entity, and directed to execute this Authorization Certificate on behalf of Entity.
- 2) Entity:
 - a. Is duly organized, validly existing and in good standing in its state of organization as well as in all jurisdictions where Entity operates.
 - b. Has the power and authority to provide this Authorization, to confer the powers identified in this Authorization Certificate, and to carry on its business as currently conducted.
- 3) That the following resolutions were duly adopted by the directors, trustees or other governing body of Entity in accord with and pursuant to the charter and other organizational documents of Entity and applicable law and are in full force and effect and have not been modified or revoked.

RESOLVED:

- a. That Yellow Cardinal is hereby appointed as an investment manager with full authority to direct the management, acquisition, and disposition of Entity's assets designated in its agreements with the Yellow Cardinal.
- b. That the following persons ("Agents") are hereby authorized to act on behalf of Entity and appoint Yellow Cardinal as an investment manager with full authority to direct the management, acquisition, and disposition of the Entity's assets as designated in Entity's agreements with Yellow Cardinal and provide instructions to Yellow Cardinal and execute documents with Yellow Cardinal on behalf of Entity.

	Name	Title
A		
B		
C		
D		

- c. That Yellow Cardinal is authorized to rely upon and to accept as genuine and authorized the facsimile signature of any Agent or such signatures that resemble facsimile signatures, without any duty to determine the genuineness of such signature or whether it was authorized by Entity.
 - d. That Entity agrees to the terms, conditions, and applicable rules or regulations of Yellow Cardinal governing accounts and services, as may be amended from time to time pursuant to their terms or as permissible by applicable law or regulation.
 - e. That the foregoing resolutions shall remain in full force and effect until written notice of their amendment or rescission shall have been received by Yellow Cardinal, and that receipt of such notice shall not affect any action taken by Yellow Cardinal prior to its receipt of such notice. Entity shall indemnify and hold harmless Yellow Cardinal from any loss or damage arising out of any action by Yellow Cardinal in reliance on, or in furtherance of, these resolutions. All transactions, if any, conducted with Yellow Cardinal prior to the adoption of these resolutions are hereby ratified, approved and confirmed.
 - f. That these resolutions supersede all prior resolutions delivered to the Yellow Cardinal, if any, concerning the above referenced accounts.
- 4) The preceding resolutions and the powers granted therein conform to the organizational documents of Entity now in effect and said resolutions are in full force and effect and have not been amended or rescinded.

ENTITY SEAL
(Optional)

I have subscribed my name to this document on

Signature of Authorized Entity Official

ESCROW AGREEMENT

THIS ESCROW AGREEMENT made as of _____, 20____ by and among the City of Bloomington, Indiana, an Indiana municipal corporation (“Owner”), _____, a(n) _____ (“Contractor”), and **FIRST FINANCIAL BANK, an Ohio state chartered bank, dba YELLOW CARDINAL ADVISORY GROUP** (“Escrow Agent”).

1. Recitals.

- 1.1 The City, and Contractor _____ (hereinafter referred to as the “Parties”), simultaneously with the execution and delivery of this Escrow Agreement, have entered into a(n) _____ Agreement for Escrow _____ dated _____, 20____ (the “Agreement”);
- 1.2 The City is required by Indiana law to enter into an escrow agreement of funds for construction of public works projects in an amount of \$100,000 or more; and
- 1.3 The City has agreed to place portions of the funds as part of its Agreement with Contractor _____ retained by the City (“Deposit”) in escrow with Escrow Agent pending the closing of the transactions contemplated by the Agreement or termination thereof prior to closing; and
- 1.4 Escrow Agent is willing to hold the Deposit in escrow on the terms and conditions hereinafter set forth.

2. Agreement. In consideration of the foregoing, the parties hereto hereby agree as follows:

2.1 The Deposit.

- 2.1.1 **Delivery of Deposit.** The City will deliver to Escrow Agency by wire transfer or certified check immediately available funds, such sum constituting the Deposit. Escrow Agent will promptly deposit and maintain the Deposit as set forth below.

Investment of Deposit.

Escrow agent will deposit the escrowed funds in a segregated First Financial wealth management cash sweep money market account managed and administered by the escrow agent or one of its affiliates; No deposit of escrowed funds will be invested in investment grade bonds or public securities except by the express written agreement of the parties. Any interest, dividends, or other income accruing on the Deposit will be credited to the Escrow Account. Escrow Agent makes no representation as to the yield of such investment and will bear no liability for any delays in depositing the Deposit or for any failure to achieve the maximum possible yield from such Deposit.

- 2.1.2 **Net Deposit.** The Deposit, less any and all transaction or account fees or charges and out-of-pocket expenses of Escrow Agent attributable to, or incurred in connection with, the deposit thereof in accordance with the terms of this Agreement which items may be deducted by the Escrow Agent from the Deposit as set forth below (such net sum being the “Net Deposit”), will be delivered by Escrow Agent in accordance with the terms of this Escrow Agreement to the person or persons entitled thereto or, if pursuant to Section 3.6 hereof, to a substitute impartial party or a court of competent jurisdiction. Escrow Agent agrees to provide the Parties with copies of each monthly statement for the Escrow

Account for the period for which the Deposit is held by Escrow Agent. As a condition to the delivery of any funds constituting part of the Deposit, Escrow Agent may require from the recipient a receipt therefor and, upon final payment or disposition, may require its release from any liability arising out of the execution or performance hereof, such release to be in a form reasonably satisfactory to Escrow Agent.

2.2 Delivery of Deposit. If the transactions contemplated by the Agreement are consummated as provided therein, then upon delivery of the Payment Certificate in the form attached hereto as Exhibit A and executed by both Parties, Escrow Agent will pay the Net Deposit, plus all accrued interest thereon, less any expenses, including but not limited to attorneys' fees, as instructed on the Payment Certificate or other joint instruction that complies with Section 3.1 below.

2.3 Effect of Termination of Agreement. If the transactions contemplated by the Agreement are not consummated as provided therein, then upon delivery of the Payment Certificate in the form attached hereto as Exhibit A and executed by both Parties, Escrow Agent will pay the Net Deposit, plus all accrued interest thereon, less any expenses, including but not limited to attorneys' fees, as instructed on the Payment Certificate or other joint instruction that complies with Section 3.1 below.

3. General.

3.1 Proper Certificate. In lieu of the presentation of the Payment Certificate described above, any document purporting to be a certificate will be deemed by the Escrow Agent to be a proper certificate, or will suffice as a joint instruction, if it contains: (i) the name of the payee; (ii) the amount of the payment to be made; (iii) the manner of payment (i.e., by certified or cashiers check, by account-to-account transfer, or by wire transfer, whichever is applicable); and (iv) the signatures of each of the parties hereto, excluding the Escrow Agent.

3.2 Authority of Signatures. Escrow Agent will be entitled to rely upon the authenticity of any signature (and upon any facsimile of a signature as if it were an original signature) and the genuineness and/or validity of any writing received by Escrow Agent from either of the Parties pursuant to or otherwise relating to this Escrow Agreement.

3.3 Authority to Execute. Each signatory to this Escrow Agreement warrants that it has full and complete authority to enter into this Escrow Agreement.

3.4 Request for Written Instructions. The Escrow Agent may at any time request written instructions from the Parties with respect to the interpretation hereof or of action to be taken or suffered or not taken hereunder and, notwithstanding any other provision hereof, will be entitled to withhold (and will not be under any liability to any person for withholding) action hereunder until it has received written instructions signed by all of the Parties.

3.5 Reliance on Advice of Counsel. The Escrow Agent may act upon advice of counsel in reference to any matter connected herewith, and will not be liable for any mistake of fact or error of judgment or for any acts or omissions of any kind unless caused by its willful misconduct or gross negligence.

3.6 Inconsistent Notices: Payment Into Court. In the event of the receipt by the Escrow Agent of any notice, demand, or certificate not provided for or in compliance with this Escrow Agreement or of any inconsistent or conflicting notices or certificates, the Escrow Agent will be protected in taking no action whatsoever with reference to any such notice or

demand, unless such inaction constitutes gross negligence or willful misconduct on the part of the Escrow Agent. In case of: (i) receipt of contradictory instructions from the Parties; (ii) any dispute as to any matter arising under this Agreement; or (iii) any uncertainty as to the meaning or applicability of any of the provisions hereof, Escrow Agent may, at its option at any time thereafter, deposit the Deposit and/or documents or assets then being held by it in escrow into a court having appropriate jurisdiction, or take such affirmative steps as it may elect in order to substitute an impartial bank of comparable financial and industrial standing to hold the Deposit and/or documents and will thereby be discharged and relieved of any and all liability hereunder.

- 3.7 Resignation of Escrow Agent.** The Escrow Agent may resign at any time by giving a minimum of 30 days' prior written notice of resignation to the Parties, such resignation to be effective on the date specified in such notice. The Deposit, and any other assets held by the Escrow Agent under the terms of this Escrow Agreement as of the effective date of the resignation, will be delivered to a successor escrow agent designated in writing jointly by the Parties. If no successor escrow agent has been appointed as of the effective date of the resignation, all obligations of the Escrow Agent hereunder will nevertheless cease and terminate, except that the Escrow Agent's sole responsibility thereafter will be to keep safely the Deposit then held by it and to deliver the same to a person designated by both Parties or in accordance with the direction of a final order or judgment or a court of competent jurisdiction.
- 3.8 Limitation of Duties.** The Escrow Agent has no responsibility concerning compliance by the Parties with their duties to each other under this Escrow Agreement or any other agreements. Escrow Agent will have only such duties and obligations as are specifically imposed upon it by the terms and conditions of this Escrow Agreement and no implied duties or obligations will be read into this Escrow Agreement against Escrow Agent.
- 3.9 Liability of Escrow Agent.** The Parties each agree that Escrow Agent will not be liable to either of the Parties for any act or omission hereunder or any matter or thing arising out of its conduct hereunder, except for Escrow Agent's willful misconduct or gross negligence. Escrow Agent will have no liability of any kind with respect to the Deposit other than to hold, invest (if so provided in Section 2.1.2 above) and release the Deposit or otherwise proceed in accordance with the terms of this Escrow Agreement.
- 3.10 Indemnification.** The Parties, jointly and severally, agree to indemnify and hold harmless Escrow Agent from and against any and all costs including its attorney's fees, claims or damages howsoever occasioned that may be incurred by Escrow Agent acting under this Escrow Agreement or to which Escrow Agent may be put in connection with Escrow Agent acting under this Escrow Agreement, except for costs, claims or damages arising out of Escrow Agent's willful misconduct or gross negligence. Following thirty days' notice to each of the Parties, Escrow Agent may charge against the Deposit any amounts still owed to Escrow Agent and may withhold payment of the Deposit as security for any unliquidated claim.
- 3.11 Fees of Escrow Agent.** As payment in full for the service to be rendered by Escrow Agent hereunder, Contractor will timely pay to Escrow Agent the fees payable in accordance with Schedule A attached hereto. Contractor agrees to _____
reimburse Escrow Agent for all reasonable expenses, disbursements and advances incurred or made by Escrow Agent in the performance of its duties hereunder (including reasonable fees, expenses and disbursements of its counsel). It is understood that Escrow Agent's fee schedule may be adjusted, upon thirty days' notice to each of the Parties, from time to time to conform with its then current guidelines.

- 3.12 **No Obligation to Use Funds.** The Escrow Agent will not be required to use its own funds in the performance of any of its obligations or duties or the exercise of any of its rights or powers, and will not be required to take any action which in Escrow Agent's reasonable judgment would cause it to incur expense or liability unless furnished with security and indemnity which it reasonably deems to be satisfactory.
- 3.13 **No Representations.** The Escrow Agent makes no representation as to the sufficiency, validity or value of the Deposit or the sufficiency or validity of this Escrow Agreement or any other instrument referred to herein, or as to the correctness of any statement contained herein or therein, except Escrow Agent represents that this Escrow Agreement is binding on Escrow Agent and enforceable against it in accordance with its terms.
- 3.14 **Bond.** No bond will be required of the Escrow Agent.
- 3.15 **Notices.** All notices, demands, requests, consents or approvals and other communications required or permitted hereunder will be in writing, and, to the extent required by applicable law, will comply with the requirements of the Uniform Commercial Code then in effect, and will be addressed to such party at the address set forth below or to such other address as any party may give to the other in writing for such purpose:

IF TO

City of Bloomington

 401 N Morton St. Ste 240

 Bloomington, In 47404

 Attn: Account Manager

WITH A COPY TO

 Attn: _____

Contractor Information

IF TO

Attn:

WITH A COPY TO

Attn:

IF TO ESCROW AGENT

YELLOW CARDINAL ADVISORY GROUP

125 3rd Street

Columbus, IN 47201

Attn:

Lynda Garber, CTFA, Fiduciary Officer

All such communications, if personally delivered, will be conclusively deemed to have been received by a party hereto and to be effective when so delivered; if given by mail, on the fourth business day after such communication is deposited in the mail with first-class postage prepaid, return receipt requested; or if sent by overnight courier service, on the day after deposit thereof with such service; or if sent by certified or registered mail, on the third business day after the day on which deposited in the mail.

- 3.16 **Modification.** This Escrow Agreement will be mutually binding on all parties and may not be modified or amended orally, but only by a writing signed by all parties hereto.
- 3.17 **Headings.** The headings contained in this Escrow Agreement are for reference purposes only and will not affect the meaning or interpretation of such instruments.
- 3.18 **Amendments and Modifications.** This Escrow Agreement may be amended, modified, superseded, cancelled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all the parties hereto.
- 3.19 **Entire Agreement.** This Escrow Agreement contains the entire agreement between the parties with respect to the escrow transaction contemplated herein and may not be changed or terminated orally.
- 3.20 **Governing Law.** This Escrow Agreement will be governed by and construed in accordance with the laws of the State of Indiana, without regard to conflict of law principles.
- 3.21 **Jurisdiction.** The Parties hereby irrevocably submit to the jurisdiction of the state court or federal district court having jurisdiction in Monroe County, Indiana, or by written consent of the parties, any state or federal court(s) located within any other county, state or jurisdiction where Escrow Agent is located, in any action or proceeding arising out of or relating to this Escrow Agreement and the parties hereto irrevocably agree that all claims with respect to such action or proceeding will be heard and determined in such federal court.
- 3.22 **Binding Nature: No Third Party Beneficiaries: Assignment.** This Escrow Agreement will be binding upon and inure solely to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns, and will not be enforceable by or inure to

the benefit of any third party, except any successor escrow agent. No party may assign any of its rights or obligations under this Escrow Agreement without the written consent of the other parties, except that either of the Parties may assign its rights and obligations hereunder in connection with a permitted assignment of its rights and obligations under the Agreement in which case any signatures required hereunder will be those of such assignee.

3.23 Counterparts. This Escrow Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

ESCROW AGENT:

YELLOW CARDINAL ADVISORY GROUP

By: _____

Name: _____

Title: _____

ESCROW PARTIES:

CONTRACTOR
CONTRACTOR

By: _____

Name: _____

Title: _____

CITY OF BLOOMINGTON

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Reviewed and Approved By:

Jeffery Underwood, Controller

**EXHIBIT A
(FORM OF PAYMENT CERTIFICATE)
[DATE]**

Yellow Cardinal Advisory Group
125 3rd St
Columbus, IN 47201

Attn: Lynda Garber, Fiduciary Officer

Ladies and Gentlemen:

Pursuant to that certain Escrow Agreement dated as of _____, 20_ by and among you as Escrow Agent and the undersigned (the "Escrow Agreement"), the undersigned hereby jointly notify and instruct you to wire transfer the balance in the Escrow Account as follows:

The Net Deposit:

Bank: _____
ABA Wire Number: _____
In the account of: _____
Reference: _____

Interest on the Deposit:

Bank: _____
ABA Wire Number: _____
In the account of: _____
Reference: _____

The undersigned, in consideration of the release of funds being held by Escrow Agent, and other good and valuable consideration, receipt of which is hereby acknowledged, hereby releases, acquits and forever discharges the Escrow Agent, and its employees, officers, directors, agents, accountants, attorneys and parent companies, and all direct directors, agents, accounts and attorneys of such parent companies and all employees, officers, and heirs, executors, administrators, successors and assigns of all of the foregoing, jointly and severally (collectively, the "Bank Parties"), of and from all and any manner of action, actions, cause and causes of action, suits, debts, dues, sums of money, accounts, bonds, bills, covenants, contracts, agreements, promises, obligations, defenses, offsets, counterclaims, damages, judgments, claims, demands and liabilities of any kind or character whatsoever, known or unknown, suspected or unsuspected, in contract or in tort, in law or in equity, that any one or more of the undersigned had, have, may have or may in the future have against any one or more of the Bank Parties arising out of, for or by reason of or resulting from or in any way related, directly or indirectly, to the Escrow Agreement. In addition, the undersigned, jointly and severally, agree not to commence, aid, cause, permit, join in, prosecute or participate in any suit or other proceeding in a position which is adverse to any of the Bank Parties, which suit or proceeding arises from or relates to, in whole or in part, directly or indirectly, any of the foregoing matters.

Sincerely,

THE ESCROW PARTIES:

City of Bloomington

By: _____
Name: _____
Title: _____

Contractor

By: _____
Name: _____
Title: _____
Email: _____

SCHEDULE A

ESCROW FEE SCHEDULE

Escrow Agreement dated _____, 20____, between Yellow Cardinal Advisory
Group, City of Bloomington, and Contractor.

The Escrow Agent will receive the following fee pursuant to the Yellow Cardinal Advisory Group published schedule, enclosed.

Fee is \$100 per account, per year and will be deducted from the Escrow Balance at the Release of Escrow funds to Contractor.

For normal services of First Financial Bank dba Yellow Cardinal Advisory Group ("Yellow Cardinal") as Escrow Agent Under Agreement, Yellow Cardinal's fees are based on initial market value, as determined by Yellow Cardinal. Separate charges and fees may apply for additional escrow transactions. Fees are charged to the account or billed to the client. Fees are as follows:

Market Value Fee *		
Account Value	Number of Transactions	Annual Fee
<\$1,000,000	1 per month	\$500
\$1,000,001- \$5,000,000	1 per month	\$1000
\$5,000,001- \$10,000,000	1 per month	\$1500
\$10,000,001- \$20,000,000	1 per month	\$2000
> \$20,000,001	1 per month	TBD

Escrow Transaction Fee *	
Transactions	Annual Fee
1 per month	No charge
2-4 per month	\$500
5-7 per month	\$1,000
8-10 per month	\$1,500
> 11 per month	TBD

* The City of Bloomington Escrow accounts will be charged a flat fee of \$100.00 per account, per year.

The Mutual Fund Compensation Disclosure and the relevant mutual fund prospectuses contain information regarding mutual fund fees and expenses and compensation which may be paid to Yellow Cardinal for services provided to certain mutual funds. You may obtain the Mutual Fund Compensation Disclosure and prospectuses from your account representative.

First Financial Wealth Management utilizes a First Financial Bank sponsored money market sweep deposit account as the primary sweep vehicle for this account. This sweep vehicle will not be subject to redemption fees or suspended withdrawals.

Termination Fees

Upon closing account and distribution of property, escrow agency may charge a reasonable termination fee.

Tax Reporting

An account will be charged for the preparation of federal and state income tax documents as required by law.

Additional Information

Other out-of-pocket expenses may be charged to the account, if and when incurred, which may include but are not limited to, the following:

- Registered mail services;
- Courier delivery services;
- Unusual or complicated asset re-registration;
- Unusual or complicated asset transfers;
- Excessive statement reproduction requests; or,
- Other extraordinary demands;
- Wire fees; and
- Legal fees as incurred.

COMMENTS: The City of Bloomington Escrow accounts will be charged a flat fee of \$100.00 per account, per year.

Client will be advised of any revisions to this schedule

GENERAL INSTRUCTIONS

What is this form?

To help the government fight financial crime, Federal regulation requires certain financial institutions to obtain, verify, and record information about the beneficial owners of legal entity customers. Legal entities can be abused to disguise involvement in terrorist financing, money laundering, tax evasion, corruption, fraud, and other financial crimes. Requiring the disclosure of key individuals who own or control a legal entity (i.e., the beneficial owners) helps law enforcement investigate and prosecute these crimes.

Who has to complete this form?

This form must be completed by the person opening a new account on behalf of a legal entity with any of the following U.S. financial institutions: (i) a bank or credit union; (ii) a broker or dealer in securities; (iii) a mutual fund; (iv) a futures commission merchant; or (v) an introducing broker in commodities.

For the purposes of this form, a legal entity includes a corporation, limited liability company, or other entity that is created by a filing of a public document with a Secretary of State or similar office, a general partnership, and any similar business entity formed in the United States or a foreign country. Legal entity does not include sole proprietorships, unincorporated associations, or natural persons opening accounts on their own behalf.

What information do I have to provide?

This form requires you to provide the name, address, date of birth and Social Security number (or passport number or other similar information, in the case of Non-U.S. Persons) for the following individuals (i.e., the beneficial owners):

i. Each individual, if any, who owns, directly or indirectly, 25 percent or more of the equity interests of the legal entity customer (e.g., each natural person that owns 25 percent or more of the shares of a corporation).

and

ii. An individual with significant responsibility for managing the legal entity customer (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer).

The number of individuals that satisfy this definition of “beneficial owner” may vary. Under section (i), depending on the factual circumstances, up to four individuals (but as few as zero) may need to be identified. Regardless of the number of individuals identified under section (i), you must provide the identifying information of one individual under section (ii). It is possible that in some circumstances the same individual might be identified under both sections (e.g., the President of Acme, Inc. who also holds a 30 percent equity interest). Thus, a completed form will contain the identifying information of at least one individual (under section (ii)), and up to five individuals (i.e., one individual under section (ii) and four 25 percent equity holders under section (i)). The financial institution may also ask to see a copy of a driver’s license or other identifying document for each beneficial owner listed on this form.

CERTIFICATION OF BENEFICIAL OWNER(S)

(Check One) **New Customer** **Existing Customer** **Triggering Event**

Persons opening an account on behalf of a legal entity must provide the following information:

- a. Name and Title of Natural Person Opening Account:

- b. Name, Type, and Address of Legal Entity for Which the Account is Being Opened:

- c. The following information for each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the legal entity listed above:

Name	Date of Birth	Home Address	For U.S. Persons: Social Security Number	For Non-U.S. Persons: Social Security Number, Passport Number and Country of Issuance, or other similar identification number ¹	Ownership Percentage

(If no individual meets this definition, please write “Not Applicable.”)

(Nonprofit Corporations only complete Part d.)

¹ In lieu of a passport number, Non-U.S. persons may also provide a Social Security Number, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

d. The following information for one individual with significant responsibility for managing the legal entity listed above, such as:

- a. An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or
- b. Any other individual who regularly performs similar functions. (If appropriate, an individual listed under section (c) above may also be listed in this section (d)).

Name / Title	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number	For Non-U.S. Persons: Social Security Number, Passport Number and Country of Issuance, or other similar identification number ¹

¹ In lieu of a passport number, Non-U.S. persons may also provide a Social Security Number, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

I, **(name of natural person opening account)**, hereby certify, to the best of my knowledge, that the information provided above is complete and correct.

Signature: Date: _____

Legal Entity Identifier: _____ (Optional)

For Institution Use Only:

	Type of Document	Document ID Number	Place of Issuance	Date of Issuance	Expiration Date
Owner 1					
Owner 2					
Owner 3					
Owner 4					
Control Person					

Verified By: _____ Date: _____

Updated March 2023

To: Prospective Bidders/Vendors/Grant recipients

RE: Affirmative Action, Harassment Policy, Living Wage Ordinance, and Drug Testing Policy

FROM: Audrey Brittingham, Assistant City Attorney/Contract Compliance Officer

AFFIRMATIVE ACTION: All bidders, vendors, and grant recipients with the City of Bloomington for projects in excess of \$10,000.00 must submit an affirmative action plan to the City Legal Department. This plan must ensure applicants and employees are treated in a manner that provides equal employment opportunity and tends to eliminate inequality based upon race, religion, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, veteran status and/or housing status.

Even if your company already has a plan on file with the City, you must check with City Legal Department to make sure it complies with the City's current requirements, including having a workforce breakdown form that is no more than six months out of date. If you already have a plan, but it does not cover all of the City's current requirements, you may submit a separate supplement with your plan to fill any gaps.

You must submit your written affirmative action plan (or supplement) to City Legal **at least twenty-four hours** before the bid, quote, or proposal deadline. When the affirmative action submission deadline falls on a weekend or City holiday, the deadline is moved up to 5:00 p.m. on the last City work day before the bid deadline. You must submit your plan to the Legal Department **separately** from your bid or quote. Twenty-four hours will give legal sufficient time to review your and the other plans. I recommend you submit your affirmative action plan to the Legal Department earlier, if possible, so there will be sufficient time to work out any problems that may be in your plan. Bidders who fail to submit acceptable plans by the deadline are subject to disqualification.

We strongly advise you to confirm that the City Legal Department has received your plan and that it meets our requirements well before the submittal deadline. We will make every effort to work with you to clear up any problems. However, it remains your responsibility to confirm that we have received your plan and that it complies with our requirements. If you fail to confirm that we have received and approved your plan, you risk losing your eligibility to submit a bid or quote. We will be glad to provide a receipt upon request. Please let us know if you want a receipt when you submit your plan.

You must ensure all of the required protected classes listed above are included in your plan. In addition to other requirements, your plan **MUST** include a current workforce breakdown, an internal grievance procedure, a non-retaliation statement, designation of a person by name or position who is responsible for implementing the plan, applicability to both applicants and employees, recruitment of minorities, equal access to training programs, and an explanation of your methods of communicating the operations of your affirmative action plan to your employees and prospective applicants.

Accompanying this letter you will find the following materials:

1. A workforce breakdown form. You **MUST** submit a workforce breakdown form (sometimes called a "utilization report") with your affirmative action plan. This form is provided for your convenience. If you already have a current form you have completed for another jurisdiction that includes the same type of information, you may submit a copy of that form instead of using our form. Your workforce breakdown data cannot be more than six months old. Even if you already have an acceptable affirmative action plan on file with the City, you should submit a new workforce breakdown each time you bid for a city contract, to be sure we have up-to-date figures.

2. An affirmative action plan checklist. We will use this checklist to review your affirmative action plan. If you compare your plan with this list, you should be able to tell whether your plan fulfills the City's requirements. If your plan omits any elements on the checklist, your plan will not be approved.
3. A sample affirmative action plan that you may amend and adopt as your own.

These documents may be useful if your company has not designed an affirmative action plan before. Feel free to adopt this plan as your own or to amend it to meet your needs.

Additional materials, such as the City of Bloomington's Contract Compliance Regulations, are available from the Legal Department upon request.

HARASSMENT POLICY: All bidders and vendors required to submit an affirmative action plan now must also submit a harassment plan. The harassment plan must, at minimum, include a definition of harassment, the name or title of the individual designated to receive and investigate complaints and a statement that the contractor will not retaliate against an employee for complaining about harassment. A model harassment policy is included for your convenience as part of our attached model affirmative action plan, which you may amend and adapt as your own. **Please note that this harassment policy requirement is fairly new, adopted by the Bloomington Common Council in June, 2019.**

LIVING WAGE: Contractors that are considered "covered employers" under City Ordinance 2.28, otherwise known as the "Living Wage Ordinance" or "LWO," are required to pay their covered employees at least a living wage. Currently, the living wage is \$15.29 per hour for covered employees, and up to 15% of that amount, or \$2.29, may be in the form of the covered employer's contribution to health insurance available to the covered employee.

If the City determines the successful bidder is a covered employer under the LWO, Contractor shall execute the Living Wage Ordinance Affidavit; shall abide by the LWO by paying their employees a living wage and providing the City with information requested in the course of enforcing the LWO; and shall post the Living Wage Poster, provided by the City Legal Department, in areas frequented by their covered employees.

The attached flow chart provides guidance on whether the contractor is a "covered employer." If you have questions, please contact Audrey Brittingham at audrey.brittingham@bloomington.in.gov, or call 812-349-3426.

DRUG TEST POLICY: Finally, please be aware that if you are submitting a bid for a public works project with an estimated cost of \$150,000.00 or more, you will need to submit your company's written drug testing plan with your bid. Your plan must comply with I.C. 4-13-18-1. Failure to do so may make you ineligible to be awarded a bid or contract. Please see your bid packet for more details.

If you have any questions, contact the City's Legal Department at 812.349.3426 or email the City at legal@bloomington.in.gov. The office hours are Monday through Friday, 8-5.

Thank you.

Model Affirmative Action Plan and

Harassment Policy

_____, declares its policy to provide equal opportunity in employment, training and advancement, and to administer its employment practices without regard to race, color, religion, sex, national origin, ancestry, disability, sexual orientation, gender identity, veteran status, or housing status. Our policy of nondiscrimination will prevail throughout every aspect of our employment practices, including recruitment, hiring, training and all other terms and conditions of employment. We shall implement this affirmative action plan to make it widely known that equal employment opportunities are available on the basis of individual merit. We shall survey and analyze our employment workforce annually to determine what steps, if any, are needed to conform effectively to this equal employment policy.

Responsible Officer

Mr. or Ms. _____ (or the _____ officer) is the equal employment opportunity officer for our company and is responsible for implementing this affirmative action policy.

Publication of Policy

Our employees will be made aware of our commitment to affirmative action through the following procedures:

- posting notices on employee bulletin boards,
- including our policy statement and plan in our personnel manual,
- regularly sending out notices of our policy in paycheck envelopes, and/or
- training supervisors to recognize discriminatory practices.

We will make potential employees aware of our policy through the following procedures:

- including the words "Equal Opportunity Employer" in all of our advertisements and notices for job openings,
- notifying employment agencies about our commitment, and
- sending notice of our policy to unions.

Implementing Our Policy

Our affirmative action plan will be implemented by widening our recruitment sources. We shall advertise in newspapers and other media that reach people in protected classes. We shall send job notices to schools with large percentages of students in the protected classes and to local groups that serve these classes.

We shall examine our hiring practices periodically to insure that we consider only job-related qualifications in filling our positions. We shall discard irrelevant educational requirements and unnecessary physical requirements. We shall ask only job-related questions on our employment applications.

We shall keep affirmative action information on each applicant who voluntarily provides this information, but separate from his or her application. We shall keep records on our hiring decisions to evaluate the success of our affirmative action measures. We shall decide placement, duties, benefits, wages, training prospects, promotions, layoffs and terminations without regard to race, sex, religion, color, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status.

GRIEVANCE PROCEDURE

If an employee or applicant feels she or he has been discriminated against on the basis of race, sex, religion, color, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status, she or he may bring the complaint to her or his immediate supervisor. If the complaint is not resolved readily at that level, she or he may submit it to _____ (personnel officer, corporate president, other) who will make a final decision on its validity. This grievance process does not preclude him or her from complaining to local, state or federal civil rights agencies. We will not retaliate against an employee or applicant for voicing a grievance or for filing a complaint with the appropriate agency.

Our current workforce breakdown is shown on the attached form.

Policy prohibiting harassment in the workplace

It is the policy of _____ (company name) to maintain a workplace free of harassment on the basis of race, sex, color, ancestry, national origin, religion, disability, age, sexual orientation, gender identity, housing status or veteran status. Harassment, as defined herein, is strictly prohibited in the workplace, and is punishable by appropriate discipline up to and including termination.

Harassment means any unwelcome or offensive conduct, whether written, verbal or physical, which is

- (a) directed at or to an employee because of his or her actual or perceived race, sex, color, ancestry, national origin, religion, disability, age, sexual orientation, gender identity, housing status or veteran status or
- (b) directed toward any person concerning an individual, or a class of individuals, because of the race, sex, color, ancestry, national origin, religion, disability, age, sexual orientation, gender identity, housing status or veteran status of the individual or class of individuals. For example, racial or ethnic slurs or derogatory epithets are prohibited in the workplace, regardless of whether a member of the racial or ethnic group is present when the statement is made.

Harassment does not refer to occasional compliments or other statements of a socially acceptable nature. Harassment refers to behavior which is unwelcome and which is offensive and/or persistent enough to create, or has the potential of creating an intimidating, hostile or offensive working environment for any employee. Harassment includes unwelcome sexual advances or requests for sexual favors, unwelcome touching of a sexual nature and unwelcome and/or offensive sexual comments.

1. This policy applies to all full-time, part-time, permanent and temporary employees, including supervisors and department heads, as well as to volunteers.
2. It is a violation of this policy to use an individual's submission to or rejection of harassing conduct as the basis for any employment decision affecting the individual.
3. An employee who believes she, he or they have been subjected to harassment as defined in this policy shall promptly report the harassment to her, his or their supervisor and/or the director of human resources or designee. _____ (company name) will make reasonable efforts to insure that a human resources representative of each sex is available to receive such complaints. The human resources department shall conduct a thorough and prompt investigation and, if appropriate, take disciplinary action against any offender, including but not limited to discharge. Staff will keep the complaint as confidential as reasonably possible. No one will be retaliated against for filing a harassment complaint.
4. All supervisory personnel who observe or otherwise learn of or have reason to suspect any conduct which may violate this policy shall promptly report such facts to the director of human resources or designee, and

shall cooperate fully in any investigation or disciplinary action undertaken pursuant to this policy. Failure to comply with this section shall be grounds for appropriate disciplinary action, up to and including termination.

5. _____ (company name) will provide regular training to employees and supervisors on the subject of harassment in the workplace. We will include information about this policy in our orientation and in our personnel policy. A copy of this policy will be posted on a prominent bulletin board. We take this matter seriously and will do all that is reasonably necessary to maintain a harassment-free workplace for our employees.

Signature

Date

WORKFORCE BREAKDOWN FORM

COMPANY NAME: _____

ADDRESS: _____

REPRESENTATIVE: _____

PHONE: _____

E-MAIL ADDRESS: _____

Position, Title Class or Category	Total Number Employees in Each	Total Number Minority Employees	Percent of Total	Total Number Female Employees	Percent of Total	Total Number Employees with Disabilities	Percent of Total

I swear or affirm under penalties of perjury that this workforce breakdown is accurate, to the best of my knowledge.

Signature and Title of Representative: _____

Date: _____

AFFIRMATIVE ACTION PLAN AND HARASSMENT POLICY CHECKLIST

Company Name: _____

NOTE: This is **not** an Affirmative Action Plan

Effective Date: _____

Contractor: Plan MUST Include:	Yes	No	Comments:
Policy statement of equal employment opportunity	<input type="checkbox"/>	<input type="checkbox"/>	
Covers: Applicants for employment	<input type="checkbox"/>	<input type="checkbox"/>	
Employees	<input type="checkbox"/>	<input type="checkbox"/>	
On basis of: Race	<input type="checkbox"/>	<input type="checkbox"/>	
Religion	<input type="checkbox"/>	<input type="checkbox"/>	
Color	<input type="checkbox"/>	<input type="checkbox"/>	
Sex	<input type="checkbox"/>	<input type="checkbox"/>	
National Origin	<input type="checkbox"/>	<input type="checkbox"/>	
Ancestry	<input type="checkbox"/>	<input type="checkbox"/>	
Disability	<input type="checkbox"/>	<input type="checkbox"/>	
Sexual Orientation	<input type="checkbox"/>	<input type="checkbox"/>	
Gender Identity	<input type="checkbox"/>	<input type="checkbox"/>	
Veteran Status	<input type="checkbox"/>	<input type="checkbox"/>	
Housing Status	<input type="checkbox"/>	<input type="checkbox"/>	
Designates a person responsible for implementation of the Plan	<input type="checkbox"/>	<input type="checkbox"/>	
Provides for communication of the policy:			
Within the Organization	<input type="checkbox"/>	<input type="checkbox"/>	
Outside the Organization (e.g., recruitment sources, unions)	<input type="checkbox"/>	<input type="checkbox"/>	
Applies to all terms and conditions of employment (e.g., hiring, placement, promotion, duties, wages, benefits, use of facilities, layoff, discipline, termination)	<input type="checkbox"/>	<input type="checkbox"/>	
Provision for: Recruitment from minority groups	<input type="checkbox"/>	<input type="checkbox"/>	
Provision for: Equal access to training programs	<input type="checkbox"/>	<input type="checkbox"/>	
Grievance Procedure	<input type="checkbox"/>	<input type="checkbox"/>	
Prohibits retaliation for filing grievances	<input type="checkbox"/>	<input type="checkbox"/>	
Workforce Breakdown (figures up to date within 6 months)	<input type="checkbox"/>	<input type="checkbox"/>	

HARASSMENT POLICY CHECKLIST

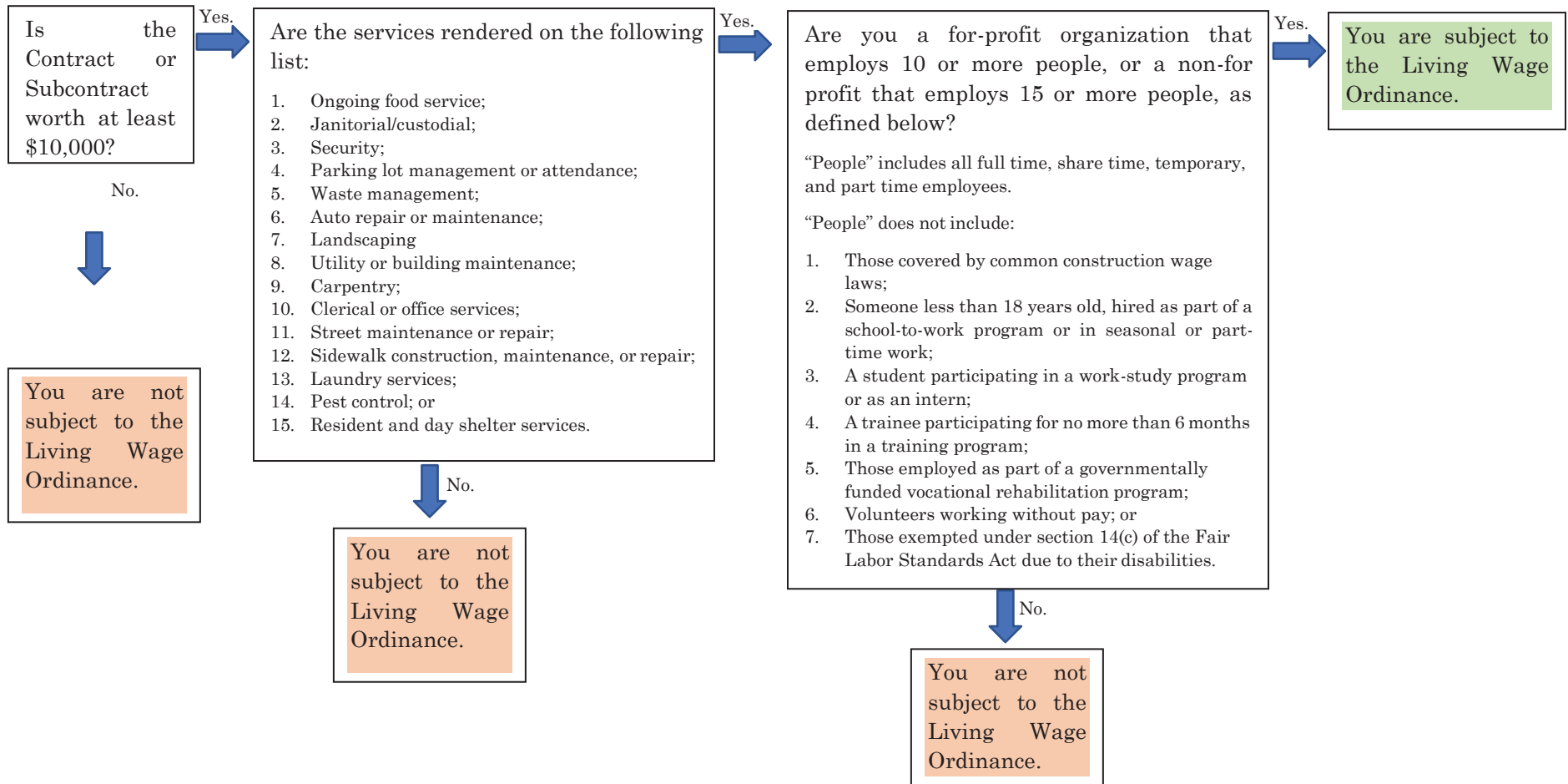
Definition of harassment	<input type="checkbox"/>	<input type="checkbox"/>
Designates a person to receive and Investigate harassment complaints	<input type="checkbox"/>	<input type="checkbox"/>
Prohibits retaliation for filing a harassment complaint	<input type="checkbox"/>	<input type="checkbox"/>

The City of Bloomington (CoB) Living Wage Ordinance (LWO) applies to three groups of employers:

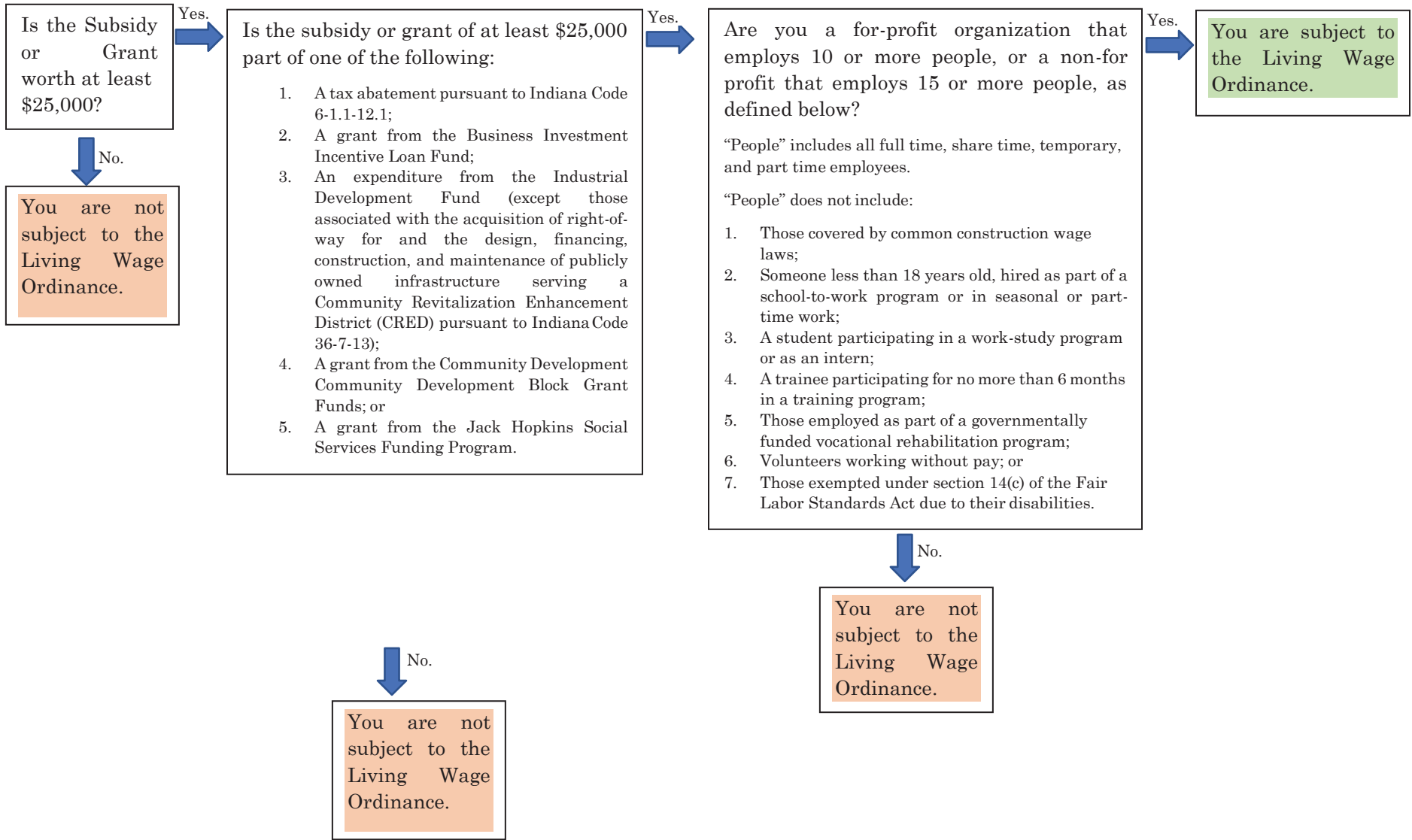
- 1) The CoB;
- 2) Companies that provide services to the CoB through contracts or subcontracts; or
- 3) Organizations that receive CoB subsidies or grants.

As an employer under categories 2 or 3, you may or may not be subject to the LWO. To find out, follow the applicable flow chart, below, or contact the City Legal Department.

Companies that Provide Services to the CoB through Contracts or Subcontracts (“Agreement”)



Companies or Organizations that Receive CoB Subsidies or Grants



**EXHIBIT “___”
AFFIDAVIT REGARDING THE LIVING WAGE ORDINANCE**

The undersigned, being duly sworn, hereby affirms and says that:

1. The undersigned is the _____ of_ (job title)
(company name)
2. The company named herein that employs the undersigned has contracted with or is seeking to contract with the City of Bloomington to provide services.
3. The undersigned hereby states that, to the best of their knowledge and belief, the company named herein is subject to Bloomington City Ordinance 2.28, otherwise known as the “Living Wage Ordinance.”
4. The projected employment needs under the award include the following:_____.
5. The projected net increase or decrease in jobs for covered employees by job title that will result from awarding the assistance:_____.
6. The undersigned hereby affirms that the smallest hourly wage to be earned by each of their covered employees shall be at least the living wage.

I affirm under the penalties of perjury that the foregoing facts and information are true and correct to the best of my knowledge and belief.

Dated this _____ day of _____, 2024.

Signature

Printed name

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 2024.

My Commission Expires:_____

Notary Public

County of Residence:_____

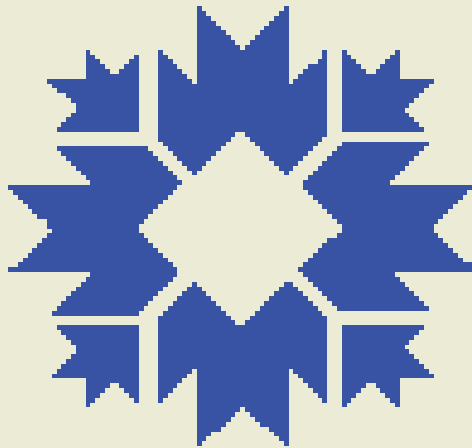
Name Printed

Commission Number

20. Living Wage Ordinance. Contractors that are considered “covered employers” under City Ordinance 2.28, otherwise known as the “Living Wage Ordinance,” or “LWO,” are required to pay their covered employees at least a living wage. Currently, the living wage is \$15.29 per hour for covered employees, and up to 15% of that amount, or \$2.29, may be in the form of the covered employer’s contribution to health insurance available to the covered employee.

If Contractor is determined to be a covered employer under the LWO, Contractor shall execute the Living Wage Ordinance Affidavit, attached as **Exhibit “D”**; shall abide by the LWO by paying their employees a living wage; and shall post the Living Wage Poster, provided by the City Legal Department, in areas frequented by their covered employees.

NOTICE TO ALL EMPLOYEES WORKING ON CITY-RELATED PROJECTS



LIVING WAGE

Your employer may be required to pay you a living wage pursuant to the Bloomington Living Wage Ordinance. There are some exceptions.

If you believe you are not receiving the required pay, contact the Living Wage Ordinance Contract Compliance Officer at the City of Bloomington Legal Department, 812-349-3426 or at legal@bloomington.in.gov.

PERFORMANCE BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: None See Paragraph 16

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

CONTRACTOR AS PRINCIPAL

SURETY

 Contractor's Name and Corporate Seal *(seal)*

 Surety's Name and Corporate Seal *(seal)*

By: _____
 Signature

By: _____
 Signature *(attach power of attorney)*

 Print Name

 Print Name

 Title

 Title

Attest: _____
 Signature

Attest: _____
 Signature

 Title

 Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence,

to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

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

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

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

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

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

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims

for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

PAYMENT BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: None See Paragraph 18

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

CONTRACTOR AS PRINCIPAL

SURETY

(seal)

Contractor's Name and Corporate Seal

(seal)

Surety's Name and Corporate Seal

By: _____

Signature

By: _____

Signature *(attach power of attorney)*

 Print Name

 Print Name

 Title

 Title

Attest: _____

Signature

Attest: _____

Signature

 Title

 Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

- 16.1 **Claim:** A written statement by the Claimant including at a minimum:
1. The name of the Claimant;
 2. The name of the person for whom the labor was done, or materials or equipment furnished;
 3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 4. A brief description of the labor, materials, or equipment furnished;
 5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 7. The total amount of previous payments received by the Claimant; and

8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

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



Issued and Published Jointly by



Endorsed by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

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

has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *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.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
35. *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.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *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.
40. *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.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *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 a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *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 but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

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

1.02 Terminology

- A. The words and terms discussed in the following paragraphs 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 Article 10 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 15.03 or 15.04).
- 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. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. 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. *Bonds:* 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 Contractor’s Insurance:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance:* After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 Copies of Documents

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

2.03 Before Starting Construction

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 Preconstruction Conference; Designation of Authorized Representatives

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

2.05 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 2.03.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 the component parts of the Work.

2.06 Electronic Transmittals

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, 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.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 Reference Standards

- A. Standards Specifications, Codes, Laws and Regulations
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, 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 part of the Contract Documents prepared by or for Engineer. 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 part of the Contract Documents prepared by or for Engineer.

3.03 Reporting and Resolving Discrepancies

- A. *Reporting Discrepancies:*
 - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

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

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

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

3.05 *Reuse of Documents*

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

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. 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.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. 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. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

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

5.01 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.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner’s interest therein as necessary for giving notice of or filing a mechanic’s or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 Use of Site and Other Areas

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

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor’s operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

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

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; 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.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site 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 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; 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 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent 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 do not warrant or guarantee 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 information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. 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; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

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

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

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. 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 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then 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 bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 Contractor's Insurance

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor’s employees.
 2. claims for damages insured by reasonably available personal injury liability coverage.
 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor’s commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor’s contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor’s pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; 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 (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
 - 1. include at least the specific coverages provided in this Article.
 - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 - 5. be appropriate for the Work being performed and provide protection from claims that 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.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, 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.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable 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 Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 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; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; 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. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
 - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. 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 occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.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, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 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.
- 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.

7.02 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, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 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, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work 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.

7.04 "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 Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that 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, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, 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;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
 - 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.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 *Substitutes*

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be 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.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. 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.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

O. 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 money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *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.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, 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 the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09 *Taxes*

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

7.10 *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 or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

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

7.12 *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, other work in progress, 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 Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
 - 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 7.12.A.2 or 7.12.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 at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
 - F. Contractor's duties and responsibilities for safety and protection 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 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
 - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *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.

7.14 *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.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent 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.

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the 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 and equipment 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 of that submittal, and that Contractor approves the 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 set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- 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 7.16.D.

2. *Samples:*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- 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 or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample 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 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
 5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
 6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
 7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

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

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.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on 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;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from 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 7.18.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 7.18.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.

7.19 *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 Laws and Regulations.
- 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, 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, 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 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 Other Work

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. 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.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, 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.

8.02 *Coordination*

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

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner for whom the Owner is responsible causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 Communications to Contractor

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

9.02 Replacement of Engineer

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

9.03 Furnish Data

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

9.04 Pay When Due

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

9.05 Lands and Easements; Reports, Tests, and Drawings

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

9.06 Insurance

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

9.07 Change Orders

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

9.08 Inspections, Tests, and Approvals

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

9.09 Limitations on Owner's Responsibilities

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

9.10 Undisclosed Hazardous Environmental Condition

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

9.11 Evidence of Financial Arrangements

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

9.12 Safety Programs

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

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 Owner's Representative

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

10.02 Visits to Site

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. 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.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. 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, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

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

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

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

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, 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 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 Compliance with Safety Program

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

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

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

11.02 Owner-Authorized Changes in the Work

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

11.03 Unauthorized Changes in the Work

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

11.04 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, 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 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.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 11.04.C.2.a and 11.04.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost 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 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 Change Proposals

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. 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;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 Notification to Surety

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

ARTICLE 12 – CLAIMS

12.01 Claims

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work 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 13.01.C, 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, and 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 13.01.
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 6.05), 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 communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work 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 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. 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 Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole 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, Change Proposal, Claim, set-off, or other 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 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, 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.

13.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: 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.

13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price 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;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that it 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 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction 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.

14.02 Tests, Inspections, and Approvals

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

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

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

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

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

14.06 Owner May Stop the Work

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work 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.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, 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, then 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 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. 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, a warehouse bond, 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.
- C. *Review of Applications:*
1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, 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 money 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 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

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

D. *Payment Becomes Due:*

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

E. *Reductions in Payment by Owner:*

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

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

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

15.02 Contractor's Warranty of Title

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

15.03 Substantial Completion

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

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

15.04 Partial Use or Occupancy

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 Final Inspection

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

15.06 Final Payment

- A. *Application for Payment:*
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of 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 have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. 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 15.07. 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. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the 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 Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 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 to 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. 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 repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- 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, 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 are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 Owner May Suspend Work

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

16.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,

and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

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

16.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 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 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 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 are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for

expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 Methods and Procedures

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

ARTICLE 18 – MISCELLANEOUS

18.01 Giving Notice

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

18.02 Computation of Times

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

18.03 Cumulative Remedies

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

18.04 Limitation of Damages

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

18.05 No Waiver

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

18.06 Survival of Obligations

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

18.07 Controlling Law

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

18.08 Headings

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

SECTION 00 73 00
SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC C-700, 2013 Rev.1 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

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

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

SC1.01 Defined Terms

Delete and replace definitions 2, 20, and 28 in Paragraph 1.01 A. of the General Conditions with the following:

2. *Agreement* - The written instrument, executed by the Owner and Contractor, which identifies the parties and the Engineer and sets forth the scope of the Work, Contract Price, Contract Times, and designates the specific items that are Contract Documents. The term "Agreement" shall be interchangeable and have the same meaning in the Contract Documents with the terms "Contract" and "Construction Contract".

20. *Engineer* – The individual or entity named as such in the Agreement. The term "Engineer" and "Owner" shall be interchangeable and have the same meaning in the Contract Documents.

28. *Owner* – The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed. The terms "Owner" and "Engineer" are interchangeable and shall have the same meaning in the Contract Documents.

SC-2.02 Copies of Documents

Delete paragraph 2.02 A. of the General Conditions in its entirety and insert the following in its place:

Owner shall furnish to Contractor one copy of the Contract Documents in electronic portable document format (PDF).

SC-2.03 Before Starting Construction

Add the following new paragraph after 2.03 A.:

B. E-Verify Reporting: Contractor shall be solely responsible for complying with the E-Verify Reporting requirements in IC 5-16-13-11 throughout the contract time. Before starting construction Contractor shall collect and submit the E-Verify case

verification numbers for each individual who will be working on the project and who is required to be verified under IC 22-5-1.7 (effective July 1, 2011), from all contractors of any tier (as defined in IC 5-16-13-4).

SC-4.01 Commencement of Contract Times; Notice to Proceed

Delete paragraph 4.01 A. of the General Conditions in its entirety and insert the following in its place:

- A. The Contract Times shall commence on the day stated in the Notice to Proceed. A Notice to Proceed will be given at any time and no later than 30 days from the Effective Date of the Agreement.

Computation of Contract Time shall commence on the start date given in the Notice to Proceed, and every calendar day following, except as herein provided, shall be counted as Contract Time, in accordance with Article 18.02.

SC-6.02 Insurance - General Provisions

Append the following sentence to 6.02 C.:

The Contractor's Certificates of Insurance shall name the Owner and the Engineer as additionally insured. The Certificate of Insurance shall clearly state the insurance coverage required is in effect and has not been decreased by claims, if any, paid by the Insurance Company. The Contractor's insurance shall not be canceled or expire without the written consent of the Owner. The insurance afforded to these additional insured shall provide primary and non-contributory coverage for all claims covered thereby.

SC-6.03 A. Workers' Compensation

Add the following new paragraph after 6.03 A. 4.:

5. The liability limits shall not be less than:

State Workers' Compensation	Statutory
Employers' Liability	Statutory

SC-6.03 C. Commercial General Liability – Form and Content

Add the following new paragraph after 6.03 C. 8.:

9. The liability limits shall not be less than:

General Aggregate	\$2,000,000 each occurrence
Products-Completed Operations Aggregate	\$2,000,000 each occurrence
Each Occurrence (BI-PD)	\$1,000,000
Property Damage liability insurance will provide explosion, collapse, and underground coverages	\$1,000,000
Fire Damage (each occurrence)	\$50,000
Medical expense (per person)	\$5,000
Excess or Umbrella Liability	
General Aggregate	\$5,000,000
Each Occurrence	\$5,000,000

SC-6.03 D. *Automobile Liability*

Append the following sentence to the end of 6.03 D.:

The liability limits shall not be less than:

Bodily Injury	
Each Person	\$1,000,000
Each Accident	\$1,000,000
Property Damage	
Each Accident	\$1,000,000
Combined Single Limit of	\$1,000,000
Excess or Umbrella Liability	
General Aggregate	\$5,000,000
Each Occurrence	\$5,000,000

SC-6.03 E. *Umbrella or Excess Liability*

Append the following sentence to the end of 6.03 E.:

The liability limits shall not be less than:

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

SC 7.02 *Labor; Working Hours*

Insert the following after paragraph A.

1. Survey and Layout work shall include but not be limited to:
 - a) Establishing, staking, and maintaining lines and grades for the proposed work in accordance with the contract documents and Contractors layout requirements.
 - b) Locating and establishing proposed structures and facilities shown on the drawings.
2. In addition to survey and layout procedures directed by the Contractor for proper performance of the Contractor's responsibilities the Contractor or his representative shall:
 - a) Locate and protect primary control points before starting work on the site.
 - b) Preserve permanent reference points and staking during progress of the Work.
 - c) Promptly advise the Engineer when a primary control point is lost or destroyed, or requires relocation because of the Work. Contractor shall replace primary control points according to the original survey control.
 - d) Contractor shall protect existing lot corners and survey monuments shown on the Drawings or encountered in the field throughout the project area. Contractor shall provide services of registered land surveyor to replace corners and survey monuments which are damaged or moved due to Contractors operations.
 - e) Contractor shall stake easements obtained for the project prior to construction as shown on the drawings.
 - f) Contractor shall stake rights of way as needed for utility relocation.
 - g) Contractor shall check accuracy of line and grade by visual inspection, checks between stakes, and periodic checks (with surveying equipment) between primary control monuments and stakes.
 - h) Contractor shall bear sole responsibility for correct transfer of construction lines and grades from primary line and grade points and for correct alignment and grade of completed Work based on lines and grades shown on Drawings.

SC-7.09 *Taxes*

Add the following new paragraph after paragraph 7.09 A.

- B. Owner is exempt from sales tax on products permanently incorporated in the work. Contractor may obtain sales tax exemption for such materials, products, and equipment and shall obtain an Indiana Sales Tax Exception Certificate from the City of Bloomington Utilities.

SC-15.01 D. 1. *Payment Becomes Due*

Delete paragraph in its entirety and replace with the following:

Thirty (30) days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to set-offs) will become due, and when due will be paid by the Owner to Contractor.

END OF SECTION 00 73 00

TECHNICAL SPECIFICATIONS

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SECTION 01010
SUMMARY OF WORK

PART 1 GENERAL

1.01 SUMMARY

A. Description

This project shall include, but is not limited to providing the necessary materials, labor, and equipment to furnish the following in accordance with the Contract Documents:

The Work includes hydraulic dredging of 5.56 acres of open water in two ponds at Miller Showers Park to remove approximately 2900 CYS of excess sediment. Pump water from the dredging project into four 100-foot by 30-foot geotextile sediment tubes located east of the stream north of the two ponds before releasing the water back into an Unnamed Tributary to Griffy Creek. After completion of the dredging the material will need to be dewatered to a range from 21% to 23% solids content and must be able to be disposed of in a traditional landfill. The contractor must keep records of loads of material removed. The dewatered solids, estimated to be approximately 1880 CYS, must then be transported to a final disposal location APPROVED BY THE CITY within a 75-mile radius of the disposal area. All specifications in the associated 401 WQC permit must be followed. A maintenance of traffic and other work incidental and implied by the plans and specifications is to be included in the project lump sum cost.

B. Measurement and Payment:

Work specified in the drawings, specifications and the contract documents, and other work which may be incidental to the denoted work, shall be included as part of contract lump sum price.

Supplemental Unit Prices, where designated on the Bid Form, shall be provided. Note that some items include a base amount which is to be included in the Base Bid as an undistributed allowance.

1.02 APPLICABLE SPECIFICATIONS INCORPORATED BY REFERENCE

- A. Construction Specifications: "City of Bloomington Utilities – Construction Specifications for Wastewater, Water, and Storm Projects". Current edition as of Bid date. Available at: <https://bloomington.in.gov/utilities/contractors>
- B. Standard Specifications: "Indiana Department of Transportation (INDOT) Standard Specifications," current edition as of bid date, including supplements effective as of the Bid Date. Available at: <https://www.in.gov/dot/div/contracts/standards/book/index.html>
- C. Standard Drawings: Indiana Department of Transportation Standard Drawings, available on <https://www.in.gov/dot/div/contracts/standards/drawings/index.html>, version effective on the Bid Date.

1.03 FORM OF SPECIFICATIONS

- A. These Specifications are written in imperative and abbreviated form. Imperative language of Specification sections is directed at CONTRACTOR, unless specifically noted otherwise. Incomplete sentences in Specifications shall be completed by inserting "shall," "CONTRACTOR shall," "shall be," and similar mandatory phrases by inference in same manner as they are applied to notes on Drawings. Except as worded to contrary, perform indicated requirements whether stated imperatively or otherwise.
- B. Specifications or requirements of one or more sections may apply or be referenced in other sections.
- C. Provide Work described and comply with requirements stated unless specifically assigned to other Contractors, Utilities or OWNER.

1.05 USE OF INDOT AND CITY OF BLOOMINGTON STANDARDS

- A. The following work (materials and workmanship) shall be governed by the INDOT Standard Specifications:
 - 1. Common Excavation (Section 203.02)
 - 2. Rock Excavation (Section 203.03)
 - 3. Erosion Control (Section 205)
 - 4. Pavement Subbase (Section 304)
 - 5. Bituminous Paving (Section 402)
 - 6. Concrete Pavement (Section 502)
 - 7. Concrete Sidewalks and Ramps (Section 604)
 - 8. Curbs (Section 605)
 - 9. Concrete Pavement for Approaches (Section 610)
 - 10. Traffic Signs, Barricades (Section 801)
 - 11. Other work not specified in these Technical Specifications or in the plans
- B. The following work (materials and workmanship) shall be governed by the CBU Specifications:
 - 1. Storm Manholes and Inlets
 - 2. Storm Sewer Piping
 - 3. Sanitary Sewers and Manholes
 - 4. Watermains and all components
 - 5. Lift Stations and all associated components, equipment and electrical systems.
- C. References in any of the above INDOT or CBU Specifications which refer to unit price work are superseded by these project specifications for a lump sum project.

1.06 UTILITY COORDINATION & RELOCATIONS

- A. **There are no known utility conflicts with this project.**

1.07 CONTRACTOR'S USE OF PREMISES

- A. Contact Indiana Underground and other utility locating services as required by law in the locality of the project.
- B. Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from injury or loss. He shall erect and maintain, as required by existing conditions and progress of work, all reasonable safeguards for safety and protection including posting danger signs and other warnings against hazards. All requirements of the Occupational Safety and Health Act are to be followed explicitly and are the responsibility of the Contractor.
- C. Assume full responsibility for protection and safekeeping of products under this Contract.
- D. Use areas which are shown as the Site. Obtain and pay for use of additional storage or Work areas needed for operations at no additional cost to OWNER.
- E. Confine removal operations to areas within limits indicated. Do not disturb portions of site beyond areas in which Work is indicated.
- F. Keep driveways, roads, and entrances serving the area clear and available to OWNER and public at all times, except as noted on the Plans. Do not use these areas for parking or storage of materials. Schedule deliveries to minimize space and time requirements for storage of materials and equipment on sites. CONTRACTOR may use closed portions of streets for short-term storage of materials so long as public will not be using the area during construction. Appropriate traffic control measures must be used at all times when lanes are restricted.
- G. CONTRACTOR may park vehicles inside the workzone at their own discretion and as the work allows. Owner cannot guarantee the security of items placed in any location by Contractor.
- H. DAMAGE TO EXISTING PROPERTY - CONTRACTOR is responsible for replacing or repairing damage to existing buildings, structures, sidewalks, roads, pavements, and other existing assets. **The Contractor is required to collect a pre-construction video or pictures which may be used to verify that damage existed prior to the Contractor's work on site.** Documentation of existing damage is strongly encouraged, to include notification of the Owner or Engineer to ensure the damage is viewed prior to disturbance in the area.

1.08 CONSTRUCTION PHASING AND MAINTENANCE OF TRAFFIC AND ACCESS

- A. Provide for public access to the area during the project.
- B. Flow of bicycle and pedestrian traffic in the trail alongside the project area must be maintained except as noted in the Plans. CONTRACTOR must complete work from within the designated work areas.
- C. **CONTRACTOR shall work closely with Owner and Engineer to ensure timely notification of adjacent property owners and businesses regarding phasing of work, scheduling, and any changes which will alter access to buildings or properties. Property and business owners are to receive notification of changes at least two weeks and then two days prior to such changes.**

D. CONSTRUCTION PHASING DESCRIPTION AND REQUIREMENTS

The Maintenance of Traffic Plans is to be provided by the contractor and approved by the city.

1.09 EASEMENTS, LICENSES, AND PERMITS

- A. Copies of any permit approvals obtained by the Contractor will be made available to the OWNER. Permits applied for by the Designer will be made available to the Contractor when received. If any permit requires modification of the project requirements, a change order will be negotiated based on the substantive change.
- B. Obtain Improvement Location Permit if required.
- C. Comply with provisions of easements, licenses, and permits.
- D. Perform construction within existing rights-of-way or within limits of easements and construction licenses.
- E. Obtain written authorization from affected property owners or maintaining authorities if construction is outside these areas. Comply with requirements of owners or maintaining authorities.
- F. Obtain written approval of restoration from easement and construction license grantors shown on Drawings in the form of a "Property Release" in accordance with the following:
 - 1. Notify property owners of restoration completion by certified mail (return receipt requested, with copy to OWNER) similar to following:

“The undersigned CONTRACTOR has completed restoration of construction site on which you have granted easement or license for installation of certain utilities and improvements. If site restoration is not completed to your satisfaction, please contact City of Bloomington Parks and Recreation Department, Attn: Paula McDevitt, 401 N. Morton St., Suite 250, Bloomington, Indiana 47404, in writing, and arrangements will be made immediately to view site and restore site in conformance with our Contract obligations.

If City of Bloomington Engineering Department does not hear from you in writing within 5 days from above date, site restoration of your property will be deemed completed and acceptable to you.”

(Signature)
 (Name of CONTRACTOR)
 (Address of CONTRACTOR)

2. Complete Work necessary to satisfy terms of Contract.
3. Failure of property owner to notify OWNER within 5 days, in accordance with above example, does not relieve CONTRACTOR of any obligations under Contract.
4. OWNER will:
 - a. Examine site upon receipt of notice of deficiency.
 - b. Have right to have remaining Work done by contract or force account and deduct cost thereof from moneys due CONTRACTOR should CONTRACTOR refuse to complete restoration Work.
 - c. Waive requirement for obtaining statement if satisfied restoration completed in accordance with Contract Documents.

1.10 STAKING

- A. All staking shall be accomplished by, and at the expense of, the CONTRACTOR.
- B. Verify layout information shown on the Drawings, in relation to the property survey and existing benchmark before proceeding to layout the work. Locate and protect existing benchmark and control points. Preserve permanent reference points during construction.
- C. ENGINEER will provide electronic files of the site plans to the CONTRACTOR in electronic format to assist them in doing layout work.

1.11 NOTIFICATION

- A. The CONTRACTOR will be responsible for contacting the following at least 48 HOURS PRIOR to any road closures if necessary (including delivery of materials).

---		<u>PHONE</u>	<u>FAX</u>
---	Mayor’s Office	349-3406	349-3455
---	Council Office	349-3409	349-3443
<u>XX</u>	Public Works	349-3410	349-3443
<u>XX</u>	Utilities Dept.	339-1444	331-5962
<u>XX</u>	City Police	349-4477	349-3353
-	IU Police	855-4111	855-1496
--	Monroe Sheriff	349-2534	349-2828
--	City Fire Dept.	332-9763	
---	Perry Twp. Fire	334-7026	336-1166

<u>XX</u>	Blgtn. Twp. Fire	339-1115	339-1120
	Van Buren Fire	825-9500	825-9700
<u>XX</u>	Ambulance	336-9894	336-9204
<u>XX</u>	City Transit	332-5688	332-3660
<u>XX</u>	IU Campus Bus	855-8384	855-5984
<u>XX</u>	MCCSC Busses	330-7719	330-7791
<u>XX</u>	Monroe County	349-2555	349-2837
<u>XX</u>	Herald-Times	332-4401	331-4383
<u>XX</u>	Daily Student	855-0763	855-8009
<u>XX</u>	Cable TV	332-9486	330-0107
<u>XX</u>	WTTS/WGTC	332-3366	331-4570
<u>XX</u>	WBWB	332-9292	336-7000
<u>XX</u>	WFIU	855-1357	855-5600
<u>--</u>	Underground Locations	1-800-382-5544	

EMERGENCY

Duke Energy	1-812-337-3035
Vectren	1-800-666-2853
...after hours	1-800-284-4295
AT&T	1-800-480-8088
Dispatch	812-556-3220
Repair	812-556-3000

Additional notices must be given 24 HOURS PRIOR to the day any street is closed or any utility is temporarily out of service.

1.12 PROJECT MEETINGS

- A. CONTRACTOR will schedule and conduct a **construction progress meeting every two weeks** for the duration of the project. Owner will designate invitees.

1.13 SALES TAX EXEMPTION

Owner is exempt from sales tax on products permanently incorporated in the work. Obtain sales tax exemption certificate number from the Office of the City Controller, (812) 349-3412. Upon completion of the work, file with the Owner, a notarized statement that all purchases made under exemption certificate were entitled to be exempt. Pay legally assessed penalties for improper use of certificate number

PART 2 PRODUCTS
(Not Used)

PART 3 EXECUTION
(Not Used)

* * * END OF SECTION * * *

SECTION 01250
SCHEDULE OF VALUES

PART 1 GENERAL

1.01 SUMMARY

- A. Submit Schedule of Values. A draft version of a pay application is an acceptable form for the Schedule of values, so long as it is sufficiently detailed and broken down into the primary phasing of the work.
- B. Upon request of ENGINEER or OWNER, support values with data.

1.02 REQUIREMENTS FOR SCHEDULE OF VALUES
(Not Used)

PART 2 PRODUCTS

(Not Used)

PART 3 EXECUTION

(Not Used)

* * *END OF SECTION * * *

SECTION 01300
SUBMITTALS

PART 1 GENERAL

1.01 SUMMARY

Section includes requirements for submittals including schedules, shop drawings, product data, samples, construction videotaping and photographs, schedule of values, and others.

1.02 PROGRESS SCHEDULES

- A. Prepare and submit Construction Progress Schedule in accordance with General Conditions.
- B. No Work shall be done between 7:00 p.m. and 8:00 a.m., nor on Sundays or holidays without written approval from OWNER. Emergency work may be done without prior permission. Night work will NOT be allowed without prior permission.**
- C. Prepare schedules in form of horizontal bar (Gantt) chart with a separate horizontal bar for each operation, listed in order of start date.
- D. Schedule:
 - 1. Show complete sequence of work.
 - 2. Show dates for beginning and completion of each major work element. Elements shall include, as applicable, the following:
 - a. Shop Drawing submittal, review by ENGINEER, and return to supplier.
 - b. Material and equipment order, manufacturer, delivery.
 - c. Performance tests and supervisory services activity.
 - d. Sanitary sewer, storm sewer, watermain, and other utility installation.
 - e. Excavation, backfilling, paving.
 - f. Landscaping work
 - g. Subcontractor's items of Work.
 - h. Restoration.
 - i. Final cleanup.
 - j. Miscellaneous items.
- E. Revisions:
 - 1. Every 30 days or as needed to reflect changes in progress.
 - 2. Indicate progress of each activity at date of submittal.
 - 3. Show changes occurring since previous submittal.
 - a. Changes in scope.
 - b. Activities modified since previous submittal.
 - c. Revised projections of progress and completion.
 - 4. Provide narrative report as needed to define following.
 - a. Problem areas, anticipated delays, and impact on schedule.
 - b. Corrective action recommended and its effect.

- c. Effect of changes on schedules of other contractors.

1.03 SHOP DRAWINGS AND PRODUCT DATA

- A. Submit in a timely manner, allowing reasonable review time, so not to delay work by contractor or subcontractor.
- B. CONTRACTOR'S Responsibilities:
 1. Review Shop Drawings and product data prior to submittal.
 2. Determine and verify following.
 - a. Field measurements.
 - b. Field construction criteria.
 - c. Catalog numbers and similar data.
 - d. Conformance with Specifications.
 3. Coordinate each submittal with requirements of Work and Contract Documents.
 4. Notify ENGINEER in writing of deviations from requirements of Contract Documents.
 5. Begin no fabrication or Work requiring submittals until return of submittals with ENGINEER approval.
 6. Designate in Progress Schedule, dates for submittal and receipt of reviewed shop drawings and samples.
- C. Submittals shall contain:
 1. Date of submittal and dates of previous submittals.
 2. Project name and number.
 3. Names of:
 - a. CONTRACTOR.
 - b. Supplier and/or Manufacturer.
 4. Identification of product, with identification numbers, and Drawing and Specification section numbers.
 5. Field dimensions, clearly identified.
 6. Identify details required on Drawings and in Specifications.
 7. Show manufacturer and model number, give dimensions, and provide clearances.
 8. Relation to adjacent or critical features of Work or materials.
 9. Applicable standards, such as ASTM or Federal Specification numbers. Identification of deviations from Contract Documents.
 10. Identification of revisions on resubmittals.
 11. **8 in. by 3 in. blank space for CONTRACTOR and ENGINEER stamps.**
 12. **CONTRACTOR'S stamp, signed, certifying to review of submittal, verification of products, field measurement, field construction criteria, and coordination of information within submittal with requirements of Work and Contract Documents.**
- D. Resubmittal Requirements:
 1. Comply with submittal requirements.
 2. Make corrections or changes in submittals required by ENGINEER. Resubmittals required until approved.
 3. Identify on transmittal form submittal is resubmission.

4. Shop Drawings and Product Data:
 - a. Revise initial drawings or data and resubmit as specified for initial submittal.
 - b. Indicate changes made other than those requested by ENGINEER.
- E. Distribute reproductions of Shop Drawings and copies of product data which carry ENGINEER'S stamp approval to following.
 1. Jobsite file.
 2. Record documents file.
 3. Other affected Contractors.
 4. Subcontractors.
 5. Supplier or fabricator.
- F. ENGINEER'S Duties:
 1. Review submittals in accordance with schedule.
 2. Affix stamp and signature, and indicate approval or requirements for resubmittal.
 3. Return submittals to CONTRACTOR for distribution or for resubmittal.

1.04 TEST RESULTS AND CERTIFICATIONS

- A. Submit test results and certifications required in Specification sections for review of conformance with specified requirements and information.
- B. Submit test results upon completion of test or submittal of results from testing laboratory.

1.05 OPERATIONS AND MAINTENANCE DATA (O&M Data)

- A. Submit O&M Data for lift station and associated equipment.

1.06 PRECONSTRUCTION VIDEO AND PICTURE RECORD AND CONSTRUCTION PHOTOGRAPHS

Prior to construction work commencement, prepare a detailed video taping and photographic log of the pre-construction condition of the project site.

1. Prepare a walkthrough video taping of the project area, narrated as necessary to set location. Discuss specific defects noted.
2. Take color photographs of special features, defects or areas of special concern to supplement video taping.
3. Provide OWNER a copy of the videotapes and photographs for their records.
4. After coordination with OWNER and property owners, prepare same survey of buildings that may be impacted. Enter buildings and record condition of spaces.
5. Conduct this survey to the full limits that are to be disturbed, and include face of all buildings nearest or adjacent to this limit.
6. Invite ENGINEER to participate in this pre-construction recording/photography as an additional witness. ENGINEER is an agent of the OWNER.

1.07 GUARANTEE, WARRANTIES, MAINTENANCE AGREEMENTS AND BONDS

- A. Refer to General and Special Conditions for requirements.

1.08 ENGINEER'S ACTION

A. ENGINEER'S Action:

1. General:

- a. ENGINEER will review each submittal, mark with action, and return. Where submittal must be held for coordination, ENGINEER will so advise CONTRACTOR.
- b. ENGINEER will stamp each submittal with action stamp, marked with submittal action.

2. Notification of Insufficient Information:

- a. If information submitted is not sufficient to complete review, ENGINEER will notify CONTRACTOR that additional information is required.
- b. Submittal will not be returned. Submittal will be placed in an "on hold" status until CONTRACTOR provides additional information.

B. Action Stamp:

1. Approved: Where submittals are marked as "Approved," Work covered by submittal may proceed provided it complies with Contract Documents. Acceptance of Work depends on that compliance.
2. Approved As Noted: When submittals are marked as "Approved As Noted," Work covered by submittal may proceed provided it complies with ENGINEER'S notations and with Contract Documents. Acceptance of Work depends on compliance. Resubmittal not required.
3. Not Approved: When submittals are marked as "Not Approved," do not proceed with Work covered by submittal. Work covered by submittal does not comply with Contract Documents. Prepare new submittal complying with Contract Documents.
4. Revise and Resubmit: When submittals are marked as "Revise and Resubmit," do not proceed with Work covered by submittal. Do not permit Work covered by submittals to be used at Project site or elsewhere where Work is in progress. Revise submittal or prepare new submittal in accordance with ENGINEER'S notations. Resubmit without delay. Repeat if required to obtain different action marking.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

* * * END OF SECTION *

SECTION 01550
ENVIRONMENTAL PROTECTION AND EROSION CONTROL PLAN

Description

This work shall consist of meeting the requirements of the various federal, state and local regulatory agencies that have jurisdiction over the conduct of the work, including those detailed in the Standard Specifications under Section 205. CONTRACTOR, in executing Work, shall maintain work areas on and off-site free from environmental pollution that would be in violation of federal, state or local regulations. Section includes detailed requirements for the implementation of the Erosion Control Plan.

Implement temporary erosion, sediment, and run-off control measures on the construction site prior to land disturbance to minimize soil from leaving the site or entering a waterbody. Erosion and sediment control measures shall be implemented using an appropriate order of construction (sequencing) relative to the land-disturbing activities associated with the project. Appropriate erosion and sediment control measures include, but are not limited to, silt fence, diversions, and sediment traps. Appropriate run-off controls include, but are not limited to diversions and slope drains. Install and/or modify control structures as necessary based on current site conditions as project progresses.

Construction Requirements

A. GENERAL.

1. CONTRACTOR is to notify the Monroe County Soil and Water Conservation District prior to the start of work at 812-349-2046.

CONTRACTOR, in executing Work, shall maintain work areas on and off-site free from environmental pollution that would be in violation of federal, state or local regulations. Contractor must comply with the terms of all permits granted for the project.

2. Observe rules and regulations of City of Bloomington, Monroe County, State of Indiana and agencies of U.S. Government prohibiting pollution of lakes, streams, rivers or wetlands by dumping of refuse, rubbish, dredge material or debris.
3. Provide measures in accordance with approved Erosion Control Plan and any permits received. When an Erosion Control Permit is in place or needed, CONTRACTOR shall assume the responsibilities of the "Operator", as designated by IDEM and shall be responsible for the full implementation and conduct of the Erosion Control Plan that was submitted to and approved by IDEM to satisfy "CSGP" requirements on behalf of the City. IDEM's Notice of Sufficiency and attachments, if applicable, are hereby incorporated by reference and are a binding part of the work by the CONTRACTOR.
4. Prevent construction material, pavement, concrete, earth, sediments or other debris from entering storm sewers, inlets, manholes or culverts. Make adjustments to erosion control measures based on actual field performance after consultation with Owner.

B. EROSION CONTROL / PROTECTION OF STORM SEWERS & WATERWAYS

1. SEQUENCING / TIMING REQUIREMENTS OF EROSION CONTROL MEASURES:

- a. Discuss the responsibility for implementation of the Erosion Control Plan at the Preconstruction meeting. Identify Contractor's responsible personnel and contact information.
- b. Provide a phasing plan of the work to identify what measures need to be in place to provide downstream or down slope protection for each phase.
- c. Post applicable permits from all state, local and federal agencies at the site as required.
- d. Construction Temporary Gravel Entrances to site as shown on the Plans. Use these for ingress/egress of implementation of all additional measures.
- e. **Based on Contractor's work area phasing plan, provide erosion control in the following general sequencing:**
 - i. Provide erosion control measures, in place, before commencing work on project site (applies to each work area).
 - ii. All erosion control measures need to adhere to the specifications detailed in the 401 WQC permit issued for this project.
 - iii. Where silt fencing is called for, install it as shown on the plans prior to disturbing upslope areas.
 - iv. Provide straw bale protection to existing culverts prior to ground disturbance upstream of that culvert
 - v. Complete temporary or permanent stabilization of slopes greater than 3:1 within 7 calendar days following initial soil disturbance. Stabilize other disturbed or graded areas within 14 calendar days. Do not install permanent seeding as this will be done by the City. Only use temporary erosion control measures.

2. MAINTENANCE OF EROSION CONTROL MEASURES
 - a. Maintain and replace erosion control measures as needed during construction. Erosion Control Measures will be inspected and repaired as needed at least once a week and after every rain event. Inspect to verify that erosion and sedimentation are being controlled by the measures in use. Implement more aggressive measures if and where needed after consultation with Owner's representative.
 - b. Maintain erosion control measures until the establishment of permanent, surface stabilization or turf.
 - c. Maintain access to the site at planned construction entrances only. Prevent tracking of mud, stone, dirt and debris onto public roadways. Clean roads as necessary, but inspect at least once daily. Street cleaning will not be paid for directly, but shall be included in the cost of various items of the Contract.

3. EROSION CONTROL MATERIAL AND WORKMANSHIP REQUIREMENTS

- a. Silt Fencing – per INDOT Standard Specifications Sec. 205 and Standard Drawing E205-TECP-02.
- b. Temporary Check Dam – INDOT Standard Specifications Sec. 205 and Standard Drawing E205-TECD-01 and E205-TECD-02
- c. Ditch Inlet Protection – Standard Drawing E205-TECI-01, 02 and 03
- d. Temporary Seeding – INDOT Standard Specifications Sec. 621.06
- e. Permanent Seeding – INDOT Standard Specifications Sec. 621.
- f. Riprap, Revetment and Geotextiles - INDOT Standard Specification Sec. 616.
- g. Erosion Control Blankets – Biodegradable and INDOT Standard Specifications Sec. 621.

4. DISPOSAL OF DREDGED MATERIALS

- a. No waste shall be disposed of improperly, or in an unregulated, unapproved manner. To do so will constitute a violation of the contract between the parties.
 - b. CONTRACTOR is responsible for all disposal or dump fees and should be included in the Base Bid.
 - c. The landfill shall be approved by the City of Bloomington Utilities (CBU) Administration Department before award and execution of the contract. CBU will provide all data to the selected and approved landfill in order to secure waste stream approvals. The hauling contractor must assume a 75 mile one way trip from the job site to a landfill for estimating cost. Round trip mileage will depend on the contractor's location but should be included in the bid cost.
 - d. The Contractor shall be responsible for complying with all federal, state and local regulatory requirements for the transportation and disposal of material.
 - e. The Contractor will assume all responsibility for the safe handling, transport and disposal of the Solids and take title of the material upon departure from the Miller Shower area.
 - f. The Contractor shall be responsible for any cost and cleanup required as a result of spillage during transportation of Solids. Contractor shall also be required to notify CBU of any spillage within two (2) hours of occurrence.
 - g. The Contractor shall provide competent and licensed operators and vehicles for transport.
 - h. Drivers must have all certifications and licenses required by the Indiana Department of Transportation, the U. S. DOT, and the State of Indiana for the class of transport vehicle required for this type of operation.
 - i. Provide watertight conveyance for liquid, semi-liquid or saturated solids which tend to bleed during transport. Liquid loss from transported materials is not permitted, whether being delivered to project site or hauled away for disposal. Fluid materials hauled for disposal must be taken to a site licensed to receive that material.
5. PROTECTION OF AIR QUALITY
- a. Minimize air pollution by requiring use of properly operating combustion emission control devices on construction vehicles and equipment and encourage shutdown of motorized equipment not in use.
 - b. Do not burn trash on construction site.
 - c. If temporary heating devices are necessary for protection of Work, they shall not cause air pollution.
6. USE OF CHEMICALS

- a. Chemicals used or furnished during construction, whether herbicide, pesticide, disinfectant, polymer, reactant or of other classification, shall be approved by U.S. EPA or U.S. Department of Agriculture or other applicable regulatory agency.
- b. Use and disposal of chemicals and residues shall comply with manufacturer's instructions.

7. NOISE CONTROL

- a. Conduct operations to cause least annoyance to residents in vicinity of Work, and comply with applicable local ordinances.
- b. Equip compressors, hoists, and other apparatus with mechanical devices necessary to minimize noise and dust. Equip compressors with silencers on intake lines.

- c. Equip gasoline or oil-operated equipment with mufflers on intake and exhaust lines.
 - d. Line storage bins and hoppers with material that will deaden sounds.
 - e. Conduct dumping and carrying rock in trucks so to cause minimum noise and dust.
 - f. Route vehicles carrying rock, concrete or other material over such streets as will cause least annoyance to public and do not operate on public streets between hours of 7:00 p.m. and 8:00 a.m. unless approved by OWNER.
8. DUST CONTROL
- a. Due to close geographic location of project to other off-site facilities take special care in maintaining temporary haul routes, OWNER'S existing roads, and public roads used during construction in clean, dust free condition.
 - b. Comply with local environmental regulations for dust control. If CONTRACTOR'S dust control measures are considered inadequate by OWNER, OWNER may require CONTRACTOR to take additional dust control measures.
9. LEAKS AND SPILLS OF FUELS AND LUBRICANTS
- a. Spill Response: In the event of a spill, Contractor shall immediately take action to prevent the spread of contaminants. While it is difficult to predict the nature and size of a spill, typical containment methods may include placing a temporary berm, emergency trench or other feature to stop and hold the contaminants until appropriate cleanup can occur.
 - b. Absorbent pads and excavation of contaminated soils to a licensed waste facility are typical measures needed. Perform any cleanup, including those measures directed by jurisdictional agencies, at no cost to the Owner.
 - c. Contactor will Contact the following agencies as part of the reporting requirements and shall respond and implement any further instructions from these agencies:
 - d. In the event of real or perceived hazard to health or safety, contact immediately: City of Bloomington - Emergency Services 911
Also contact the following within 2 hours:
City of Bloomington – Department of Public Works, MS4 812-349-3410
Indiana Department of Environmental Management 888-233-7745
Indiana Department of Natural Resources - Division of Water 317-232-4160
Monroe County Soil & Water Conservation District – 812-349-2046
 - e. Inspect onsite vehicles and equipment daily at the startup for leaks, and repair immediately. Report spills or leaks from fueling equipment or construction

equipment to OWNER and cleanup as required. OWNER may require CONTRACTOR to remove damaged or leaking equipment from Project site.

- f. Comply with local, state and federal regulations concerning transportation and storage of fuels and lubricants. Properly dispose of used oils, fluids, lubricants and spill cleanup materials. Do not place used oil in a dumpster or pour into a storm drain or watercourse.
- g. Onsite vehicle and equipment fueling should only be used where it is impractical to send vehicles and equipment offsite for fueling. Drip pans and absorbent pads should be used during vehicle and equipment fueling, unless the fueling is performed over an impermeable surface in a dedicated fueling area. Nozzles used in vehicle and equipment fueling should be equipped with an automatic shutoff to control drips. Fueling operations should not be left unattended. Federal, state, and local requirements should be observed for any stationary above ground storage tanks.
- h. Do not conduct equipment repairs and maintenance on the project site, except as required to mobilize or recover the equipment to make it possible to transport it to an off-site repair facility. If maintenance must occur on site, the area where repairs are to be made must be located away from drainage courses. Drip pans and/or absorbent pads should be used during vehicle and equipment maintenance work that involves fluids, unless the maintenance work is performed over an impermeable surface in a dedicated maintenance area.
- i. If any soils are contaminated with fluids during the construction operation, use absorbent pads or other approved method to remove as much of the material as possible, then remove the soil itself. Transport and dispose of such materials by an approved method and dispose of at a facility licensed to receive such materials.

END OF SPECIAL PROVISION

SECTION 01700
PROJECT CLOSEOUT AND RECORD DOCUMENTS

PART 1 GENERAL

1.01 SUMMARY

A. Maintain at site one record copy of:

1. Project Manual.
2. Addenda.
3. Change orders and other modifications to Contract.
4. ENGINEER or OWNER field orders, written instructions, or clarifications.
5. Approved submittals.
6. Field test records.
7. Construction photographs.
8. Associated permits.

1.02 SUBMITTALS

- A. At Substantial Completion, CONTRACTOR shall provide one marked up set of record documents to the OWNER.

PART 2 PRODUCTS

(Not Used)

PART 3 EXECUTION

3.01 MAINTENANCE OF DOCUMENTS AND SAMPLES

- A. Store record documents and samples in CONTRACTOR'S office apart from documents used for construction.
1. Provide files and racks for storage of documents.
 2. Provide secure storage space for storage of samples.
- B. Maintain documents in clean, dry, legible condition and in good order. Do not use record documents for construction purposes.
- C. Make documents and samples available for inspection by ENGINEER or OWNER.
- D. Failure to properly maintain record documents may be reason to delay a portion of progress payments until records comply with Contract Documents.

3.02 RECORD DOCUMENTS

- A. Label each document "PROJECT RECORD" in neat, large printed letters.
- B. Record information concurrently with construction progress.
 - 1. Do not conceal Work until required information is recorded.
 - 2. Record changes made by Written Amendment, Field Order, or Change Order.

* * * END OF SECTION * * *

SECTION 02200
SITE PREPARATION

PART 1 – GENERAL

1.01 SUMMARY

Section includes site protection, preparation of site to accommodate pedestrian traffic, and any restoration of the site

PART 2 – PRODUCTS

2.01 FENCE

- A. Around area where dredged material will be dewatered, install a 4' minimum height industry standard plastic (snow) construction fence.

PART 3 – EXECUTION

3.01 PREPARATION

- A. Provide notice to owners of utilities minimum 3 working days before starting work. Contact Indiana Underground and other utility locators as required by local law.
- B. Protect existing utilities and surface features indicated to remain. Restore damaged existing utilities and surface features to a condition equal to that prior to dredging.
- C. Protect trees, shrubs, and other plants where indicated to remain. Provide fencing no closer than the "dripline" of the trees and shrubs and of sufficient height so features will not be damaged. Maintain protection and allow no access into the dripline area. The dripline requirement may be overridden where a closer limit is shown on the plans.
- D. Do not remove, cut down or trim trees. Prevent puddling of water around trees and shrubs. Protect dumping of refuse or storage or handling of chemicals near trees.
- E. Discourage unauthorized access to the site by the public by erecting and maintaining industry standard fencing. Use fencing, cones and other accepted devices to mark off and warn the public of excavations and other hazards.

3.05 RESTORATION

- A. Restore areas as shown on the plans, incorporating any changes to the areas as shown.
- B. Restore existing utilities, surface features, landscaping, and structures to a condition equal to or better than that which existed prior to construction in those areas outside of the location of the geotextile bags.
- C. In the areas where the geotextile bags are to be removed, lay temporary biodegradable erosion control blanket without seed once bags have been removed.

3.06 DISPOSAL

- A. Remove brush, grass, roots, trash, and other material from site. Do not store or permit debris to accumulate on the job site.
- B. Dispose of materials removed by in accordance with applicable regulations.

* * * END OF SECTION * * *

SECTION 02900
LANDSCAPING

PART 1 – GENERAL

1.01 SUMMARY

A. Section Includes:

1. Preparing ground surface.
2. Mulched Seeding
3. Sodding
4. Fertilizer
5. Mulch
6. Maintenance

B. All areas that are not associated with the dewatering area (or other natural areas) are to adhere to these standards. Please contact CBU with any questions about landscape restoration.

C. Areas associated with dewatering area and other natural areas will be stabilized and restored by the City. Only temporary biodegradable erosion control blanket without seed should be used to stabilize the soil in these areas. No fertilizers, or other amendments should be used.

1.02 SUBMITTALS

A. Test Results: Topsoil test results including fertilizer and lime requirements for each source of topsoil.

B. Product Data:

1. Seed: Product tag or manufacturer specification providing complete composition breakdown.
3. Fertilizer: Product tag or manufacturer specification providing complete composition.
4. Mulch: Manufacturer sheet providing complete composition of mulch.
5. Mulch binder: Product specification and written application instructions.

1.03 QUALITY ASSURANCE

A. Seed: Conform to U.S. Department of Agriculture Rules and Regulations under Federal Seed Act and requirements of state seed laws.

B. CONTRACTOR shall engage certified soils testing laboratory to perform a soils evaluation of existing and/or imported topsoil to determine fertilizer and lime requirements. Provide a minimum of 1 composite soil sample, consisting of 3 test borings, for every 5 acres to be seeded or sodded.

1.04 DELIVERY, STORAGE, AND HANDLING

A. Provide seed mixture in sealed containers showing percentage of seed mix, year of production, net weight, date of packaging, and location of packaging.

B. Deliver fertilizer to site in waterproof bags showing weight, chemical analysis, and name of manufacturer.

1.05 WARRANTY

- A. Warranty lawn areas for period of 1 yr after acceptance of seeding and sodding to be alive and in satisfactory growth at end of warranty period.
- B. For purpose of establishing acceptable standard, scattered bare spots, none larger than 1 sq ft, will be allowed up to a max of 3% of lawn area.

PART 2 – PRODUCTS

2.01 TOPSOIL

- A. Obtain topsoil from in-situ source, or provide imported topsoil obtained from sources outside the project limits, or from both sources. Stockpiled topsoil shall be screened to meet specified requirements.
- B. Contractor shall engage a certified testing laboratory to test all stockpiled or imported topsoil to ensure it meets above requirements. Also have laboratory determine fertilizer and lime requirements.
- C. Topsoil for lawn areas: Friable loam with minimal amounts of clay and free of subsoil, roots, grass, weeds, stones, debris and foreign matter, a pH range of 5.9 to 7.0 and containing a minimum of 6% and a maximum of 25% organic matter.

2.02 SEED

- A. Not Used

2.03 SOD

- A. Per INDOT Standard Specifications

2.04 FERTILIZER

- A. Commercial balanced, uniform in composition, free flowing, conforming to state and federal laws.
- B. Contain percentage by weight as follows, or as modified by topsoil test recommendations.
 - 1. Prior to seeding or sodding: 6-24-24.
 - 2. After seeding or sodding: 18-5-9.
- C. 50% of elements shall be derived from organic sources.

2.05 LIME

- A. Ground Limestone containing not less than 85% of total carbonates and ground so that 50% will pass through a 100-mesh sieve and 90% through a 20-mesh sieve.

2.06 ACCESSORIES

- A. Mulch: Dry oat or wheat straw or wood cellulose fiber free of weeds and foreign matter detrimental to plant life. Hay or chopped corn stalks are not acceptable.
- B. Water: Furnished by CONTRACTOR. Provide pumps, tankage, hose, piping, and attachments as required to bring water to point of use.
- C. Erosion Control Blanket: Open weave jute matting or biodegradable netting interwoven with wood excelsior fiber.
 - 1. Roll type, consistent thickness with even fiber distribution over entire area.
 - 2. Approximately 1 in. sq mesh, nominal weight 1 lb/sq yd.
- D. Hydro Binder for mulch on mulched-seeding: Commercially produced, mulch binder in accordance with all applicable State and Federal regulations.

PART 3 – EXECUTION

3.01 SURFACE CONDITIONS

- A. Examine the areas and conditions under which work of this Section will be performed. Correct conditions detrimental to timely and proper completion of the Work. Do not proceed until unsatisfactory conditions are corrected.

3.02 PLANTING SEASONS

- A. Spring Planting Season: From time soil can be satisfactorily worked until following dates. Seed: April 15 to May 30.
- B. Fall Planting Season:
 - Seed: August 15 to September 30, or as deemed acceptable in advance by Owner.
- C. Perform planting of seed only when weather conditions and soil conditions are acceptable.
- D. Planting season limits may be changed when approved by ENGINEER.

3.03 PREPARATION

- A. Finish grading will be performed under Section 02300.
- B. Do not plant seed until trees, shrubs, and other landscaping completed.
- C. Scarify existing topsoil where grade is not being raised, or where topsoil is over compacted, to depth of 2 in.
- D. For topsoil with high acidity, add lime as recommended in topsoil test report.
- E. Grade, rake, and roll with roller weighing not more than 100 lbs/ft or less than 25 lbs/ft.
- F. Maximum variation from correct elevation is 1/2 in. in 10 ft.

G. **Owner must approve final grading prior to commencement of seeding operations.**

3.04 FERTILIZING

- A. Before seeding, apply fertilizer at uniform rate. Make 2 passes at right angles. Incorporate fertilizer into soil to depth of at least 2 inches by discing, harrowing, or other approved method.
- B. After completion of required interim mowings, apply fertilizer. Make 2 passes at right angles.
- C. Adjust rate of application and type of fertilizer as recommended in topsoil test report.
- D. Lightly water to aid dissipation of fertilizer.

3.05 SEEDING

- A. Apply seed at a total rate of not less than 8 lbs/1000 sq ft. Make 2 passes at right angles.
- B. Seeding method shall establish smooth, uniform turf.
- C. Cover seed with 1/8 in. of soil by light raking.
- D. Do not seed following rain, if soil has been compacted by rain, or if ground is too dry.
- E. Do not seed when wind velocity exceeds 6 mph.
- F. Do not seed areas in excess of that which can be mulched on same day.
- G. Immediately after seeding, apply mulch to flat areas and erosion control blanket to slopes.
- H. Place mulch loose to allow some sunlight to penetrate and air to circulate, but thick enough to shade ground, conserve soil moisture, and prevent erosion.
- I. In all areas not receiving blankets, apply hydro binder material to mulch in accordance with manufacturer's specifications.
- J. Butt ends and edges of erosion control blanket snugly and staple to ground surface with 6 in. staples.
- K. Apply water with fine spray immediately after area has been mulched or application of erosion control blanket. Leave area thoroughly soaked at close of each working day.

3.06 LAYING SOD

- A. Not used

3.07 PROTECTION

- A. Protect turf areas by erecting temporary fences, barriers, signs, and similar protection as necessary to prevent trampling until acceptance by OWNER.
- B. Replace, repair, restake, or replant damaged seeding or sod.
- C. Protect slopes and embankments against erosion until Work is accepted. Repair eroded areas by refilling, resodding, reseeding, and remulching as required.

3.08 FIELD QUALITY CONTROL

- A. Acceptance:
 - 1. Notify ENGINEER when lawn areas are ready for final inspection.
 - 2. Substantial completion will be granted upon conformance with the following;
 - a. Turf reasonable free from weeds, diseases or other visible imperfections.
 - b. Turf displays uniform color, quality and coverage.
 - c. Min 3 mowings performed.
 - d. Fertilizer application performed after mowing.
 - 3. Until acceptance by OWNER, CONTRACTOR will be responsible for maintenance.

3.09 MAINTENANCE

- A. Maintain pedestrian barriers to protect newly seeded or sodded areas from traffic. Maintenance shall begin immediately following installation of each portion of lawn. Continue until acceptance.
- B. Reapply mulch and hydro binder to mulch if it becomes dislodged prior to adequate growth.
- C. Maintain lawns by watering, mowing, and repairing or replanting as may be necessary to produce uniform stand of grass until Work accepted.
- D. Perform first mowing when average height of grass reaches 3 in. Perform interim mowings, 2 minimum, as needed to maintain grass height at 2 to 2-1/2 in. Do not remove more than 1/3 of leaf blade by mowing.
- E. After completion of required interim mowings, apply 18-5-9 fertilizer as specified herein.
- F. Control weed growth. Apply herbicide in accordance with manufacturer's instructions.

*** END OF SECTION ***

PERMIT INFORMATION

Permits by the Engineer:

Multiple permits are required for this project, most of which the Engineer has applied for and is responsible for completing. These Permits, and their respective status, are as follows.

- Indiana Department of Environmental Management – Section 401 Water Quality Certification Nationwide Individual Permit
Permit has been secured. *IDEM number 2023-699-53-ERL-A.*

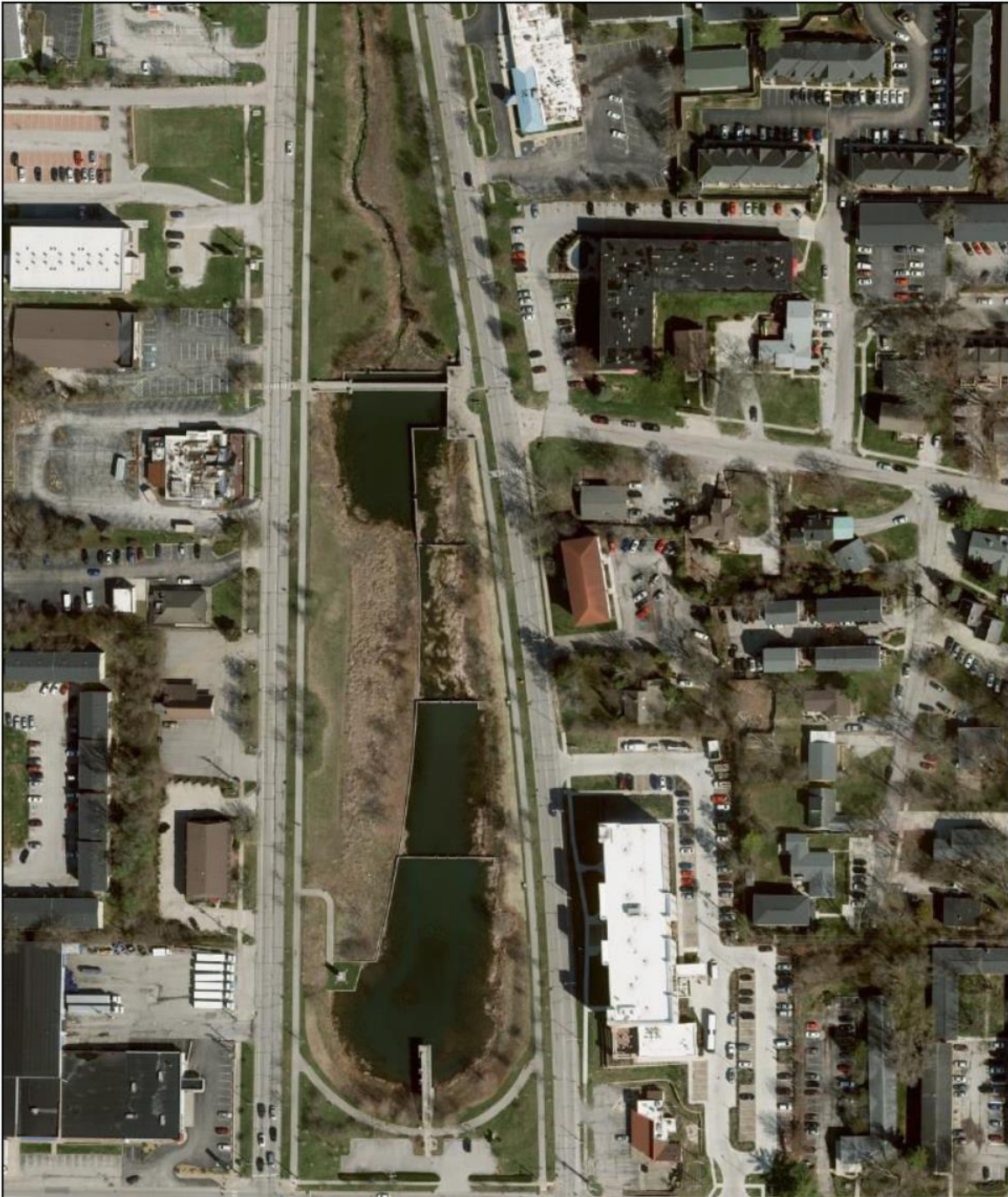
The Specification for this project have been assembled with the anticipated requirements of these agencies in mind. Bidders are to assemble their bids in accordance with the requirements presented.

Once received, in the event that the terms and conditions of the noted permits differ from those of the plans and specifications, the requirements of the permits shall be applied and substantive changes to project requirements will be negotiated as a change order to the contract.

Permits by the Contractor:

None are anticipated with this project.

SITE MAP



Miller Showers		Enter your notes here!	Utilities
Author	Center: 86°32'1"W 39°10'51"N		
11/16/2023 3:56 PM	Scale: 1" = 188'		
<small>Important Notice: The position of underground utilities are shown schematically. Please call 811 to have all underground utilities located.</small>			