

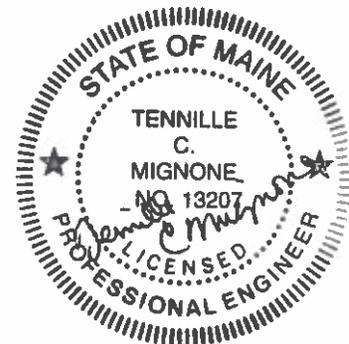
**PROJECT MANUAL**  
for the  
**COURT STREET SEWER  
SEPARATION PROJECT**



**AECOM**

250 Apollo Drive  
Chelmsford, MA 01824

January 2016



JOHN M. THERIAULT, PE, PTOE  
CITY ENGINEER

CATHERINE M. CONLOW  
CITY MANAGER

## **A. NOTICE TO CONTRACTORS**

**SECTION A**

**NOTICE TO CONTRACTORS**

Bids are requested for the

**COURT STREET SEWER SEPARATION PROJECT**

The project includes installation of a new drainage system along Court Street within the intersections of Bean Court and Boynton Street. This work will consist of approximately 1,000 feet of new stormwater pipes, new drain manholes, new catch basins, new catch basin laterals, and removal and/or abandonment of existing catch basins. This work will include erosion control, traffic control, and coordination with the City and utility companies. The project also includes installation of approximately 800 linear feet of new sanitary sewer and connection to the existing system. This work will consist of new sanitary sewer pipe, new sanitary sewer manholes, special sanitary sewer connection structures, and removal of existing brick combined sewer system. This work will include erosion control, traffic control, and coordination with the City and utility companies.

All work is to be completed by October 15, 2016.

For consideration, the attached bid form sealed in an envelope, distinctly marked

**“COURT STREET SEWER SEPARATION PROJECT”**

must be received at the Office of the City of Bangor Purchasing Agent by

**March 30, 2016, 2:00 PM**

at which time all proposals will be opened and read aloud.

A **prebid meeting** will be held on **March 10, 2016 1:00 PM** at the City of Bangor’s Council Chambers, 73 Harlow Street, Bangor, Maine.

The City reserves the right to waive any informalities in or to reject any or all bids submitted, or to accept any proposal considered to be the most advantageous to the City.

Specifications may be obtained at the Engineering Department, City Hall, 73 Harlow Street, Bangor, Maine 04401, for a one-hundred dollar (**\$100.00**) charge. If plans need to be mailed, an additional fee of thirty-five (**\$35.00**) will be charged.

## Special Provisions

The work under this project is funded by the Maine CWSRF fund and is subject to special provisions, including but not limited to, Davis Bacon wage rates. These have been included as Section F, “SRF Provisions”, and Section G, “Standard General Conditions of the Construction Contract”. In accordance with the 2014 Consolidated Appropriations Act, all iron and steel materials used as part of this project must be manufactured in the United States.

All contractors and subcontractors are hereby notified that the City of Bangor has entered into a Consent Decree with the United States and the State of Maine. For the purposes of the Consent Decree, contractors and subcontractors are deemed agents of the City. Any and all work performed by contractors and subcontractors must conform with the terms of the Consent Decree. Contractors must familiarize themselves with the contents of the document and must make the document available to all subcontractors. This document is available electronically at [http://www.bangormaine.gov/filestorage/318/350/7758/ENV\\_ENFORCEMENT.PDF](http://www.bangormaine.gov/filestorage/318/350/7758/ENV_ENFORCEMENT.PDF) or in hard-copy in the City of Bangor’s Engineering Department.

## Bid Bond

A certified check or bank draft payable to the Owner or a satisfactory Bid Bond executed by the Bidder and a Surety Company in the amount equal to five percent (5%) of the Bid shall be submitted with each bid. No bid may be withdrawn for at least 30 days after receipt of bids unless released by the Owner.

## Nondiscrimination in Employment and Labor Standards

Bidders on this work will be required to comply with the President’s Executive Order No. 11246 and amendments or supplements to that Order. The requirements for bidders and contractors under this Order are explained in the Information for Bidders.

## Federal Requirements

The Contractor must comply with all the Safety and Health Regulations (CFR29 part 1926 and all subsequent amendments) as promulgated by the US Department of Labor on June 24, 1974, the Department of Labor Regulations relating to Copeland “Anti-Kickback Act (18 U.S.C. 874) as supplemented by 29 CFR part 3, Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by 29 CFR part 5, and Occupational Safety and Health Standards (OSHA) (29 CFR part 1910). The Contractor must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.D. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), and Executive Order 11738. Contractors are urged to become familiar with the requirements of these regulations.

## Disclaimer

Any awarded contract is expected to be funded, in part, by a State Revolving Loan and/or a State Grant. Neither the State of Maine nor any of its departments, agencies, or employees is or will be a party to this Agreement. The word “AGENCY” in the standard general conditions and the owner-contractor agreement refers to the Maine Department of Environmental Protection, if it is the sole funding agency. If the contract is funded by multiple agencies, then the word “AGENCY” refers to all of the funding agencies.

## **B. INSTRUCTIONS TO BIDDERS**

# INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACTS

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly by



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# INSTRUCTIONS TO BIDDERS

## TABLE OF CONTENTS

	<b>Page</b>
Article 1 – Defined Terms .....	1
Article 2 – Copies of Bidding Documents .....	1
Article 3 – Qualifications of Bidders .....	1
Article 4 – Examination of Bidding Documents, Other Related Data, and Site .....	2
Article 5 – Pre-Bid Conference .....	5
Article 6 – Site and Other Areas.....	5
Article 7 – Interpretations and Addenda .....	5
Article 8 – Bid Security .....	5
Article 9 – Contract Times .....	6
Article 10 – Liquidated Damages.....	6
Article 11 – Substitute and “Or-Equal” Items.....	6
Article 12 – Subcontractors, Suppliers and Others (Deleted).....	6
Article 13 – Preparation of Bid .....	6
Article 14 – Basis of Bid; Comparison of Bids .....	7
Article 15 – Submittal of Bid .....	8
Article 16 – Modification and Withdrawal of Bid.....	9
Article 17 – Opening of Bids.....	9
Article 18 – Bids to Remain Subject to Acceptance.....	9
Article 19 – Evaluation of Bids and Award of Contract.....	9
Article 20 – Contract Security and Insurance .....	10
Article 21 – Signing of Agreement .....	10
Article 22 – Sales and Use Taxes.....	10
Article 23 – Retainage .....	11
Article 24 - Other Requirements.....	12

## **ARTICLE 1 – DEFINED TERMS**

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below. The following terms or, in the case of City, Engineer, or Contractor, the singular, masculine pronouns used in their place, shall have the following meanings within the context of this Contract:
- A. *Issuing Office* – The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
  - B. *City* – The City of Bangor, Maine, acting through its duly authorized representatives.
  - C. *Engineer* – The Bangor City Engineer or duly authorized representatives.
  - D. *Contractor* – The individual, firm, or corporation to whom the contract has been awarded, whether acting on his own or through subcontractors or employees.
  - E. *Contract* – The Contract shall be deemed to include the Notice to Contractor, Instructions to Bidders, the Bid Form, the Agreement, the General Conditions of the Construction Contract, the Supplementary General Conditions, the Performance and Payment Bond(s), the Specifications and Plans, any addenda which may be issued to any of the foregoing, and all other provisions which may be required by law to be included in this Contract, whether actually included or not.

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

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

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

- 3.01 To demonstrate Bidder's qualifications to perform the Work, within seven (7) days of City's request, Bidder shall submit written evidence such as financial data, previous experience,

present commitments, and evidence of Bidder's authority to do business in the state of Maine.

- A. The City may make such investigations as he may deem necessary to determine the ability of any bidder or bidders to perform the work, and the bidder(s) shall furnish to the City all such information and data pertinent to this investigation as the City may request. The City reserves the right to reject any bid after evidence submitted or investigation of the bidder fails to satisfy the City that such bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein. Conditional bids will not be accepted.
- 3.02 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

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

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

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

##### *4.02 Underground Facilities*

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

##### *4.03 Hazardous Environmental Condition*

- A. The Supplementary Conditions identify any reports and drawings known to City relating to a Hazardous Environmental Condition identified at the Site.
- B. Copies of reports and drawings referenced in Paragraph 4.03.A will be made available by City to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in

Paragraph 4.06 of the General Conditions has been identified and established in Paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

- 4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 4.06 of the General Conditions.
- 4.05 On request, City will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.
- 4.06 A. Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by City, or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, the City will provide to each Bidder for examination access to or copies of contract documents (other than portions thereof related to price) for such other work.
- B. Paragraph 6.13.C of the General Conditions indicates that if a City safety program exists, it will be noted in the Supplementary Conditions.
- 4.07 It is the responsibility of each Bidder before submitting a Bid to:
- A. examine and thoroughly familiarize himself with the Bidding Documents, including the plans, specifications, any addenda which may have been issued thereto, and the other related data identified in the Bidding Documents;
- B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in Paragraph 4.02

of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in the Paragraph 4.06 of the Supplementary Conditions as containing reliable "technical data";

- E. consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs;
- F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- G. become aware of the general nature of the work to be performed by City and others at the Site that relates to the Work as indicated in the Bidding Documents;
- H. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
- I. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- J. Failure of the Bidder to receive and examine any form, instrument, or document, or to visit and examine the site itself will not in any way relieve the successful bidder from any obligation in respect to his bid or to the terms of this contract.

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

## **ARTICLE 5 – PRE-BID CONFERENCE**

5.01 A pre-Bid conference will be held on **March 10, 2016 1:00 PM** at the Council Chambers. Representatives of City and Engineer will be present to discuss the Project. Bidders are invited to attend and participate in the conference. Engineer will transmit to all prospective Bidders of

record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

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

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

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

7.01 No interpretation of the meaning of the plans, specifications or other Bidding Documents will be made to any bidder orally. Every request for such interpretation must be in writing and must be received at least five (5) working days prior to the bid opening date by:

bids@bangormaine.gov

Subject Line: Court Street Sewer Separation Project, Attn: Engineering

Any and all such interpretations and any supplemental instructions will be written addenda to the specifications which, if issued, will be mailed by registered mail with return receipt requested to all prospective bidders at least three (3) working days prior to the bid opening date. Failure of any bidder to receive any addenda or interpretation thus mailed will not relieve the bidder of his obligation under the bid submitted. All addenda so issued will become an integral part of the Contract documents.

## **ARTICLE 8 – BID SECURITY**

8.01 A certified check or bank draft payable to the City or a satisfactory Bid Bond executed by the Bidder and a Surety Company meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions in the amount equal to five percent (5%) of the Bid shall be submitted with each bid. Bid Bond C-430 included in the Bidding Documents is a satisfactory Bid Bond form. Said check, bid bond, or cash will be returned to all except the two (2) lowest bidders immediately following the opening of bids, and the remaining sureties will be returned after the City, and Contractor have executed the Contract. If the Contract has not been awarded within thirty (30) days of the bid opening, the surety will be returned at any time thereafter to any bidder who so requests, so long as he has not been notified of the acceptance of his bid.

8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails for any reason to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, the City may determine that the Bidder has abandoned the Contract, may annul the Notice of Award, the Bid security of that Bidder will be forfeited and will be retained by the City as liquidated damages, and the

Contract may be awarded to another bidder. Such forfeiture shall be City's exclusive remedy if Bidder defaults. After the execution of the Contract and acceptance of the bond by the City, the surety accompanying the Successful Bidder's bid shall be returned. The Bid security of other Bidders whom City believes to have a reasonable chance of receiving the award may be retained by City until the earlier of seven days after the Effective Date of the Agreement or 31 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

#### **ARTICLE 9 – CONTRACT TIMES**

- 9.01 The times for Substantial Completion and readiness for final payment are to be set forth by Bidder in the Bid and will be entered into the Agreement (or incorporated therein by reference to the specific language of the Bid). The Contractor shall complete all work to the satisfaction of the Engineer on or before October 15, 2016, subject only to such other provisions of this Contract as may apply. The times will be taken into consideration by City during the evaluation of Bids, and it will be necessary for the apparent Successful Bidder to satisfy City that it will be able to achieve Substantial Completion and be ready for final payment within the times designated in the Bid.

#### **ARTICLE 10 – LIQUIDATED DAMAGES**

- 10.01 Provisions for liquidated damages, if any, are set forth in the Agreement. See also Article 8.02 herein.

#### **ARTICLE 11 – SUBSTITUTE AND “OR-EQUAL” ITEMS**

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or “or-equal” items. Whenever it is specified or described in the Bidding Documents that a substitute or “or-equal” item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement.

#### **ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS AND OTHERS (ARTICLE DELETED)**

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

- 13.01 Bids must be submitted on the Bid Form included with the Bidding Documents.
- 13.02 All blanks on the Bid Form shall be completed in ink, in both words and figures, and shall be signed in ink. The price quoted in the bid shall be for the total project, complete and shall include all labor, tools, materials, supplies, equipment, and all else necessary for or incidental thereto. In the case of optional alternatives the words “No Bid,” “No Change,” or “Not Applicable” may be entered.

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

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

##### *14.01 Lump Sum*

- A. Bidders shall submit a Bid on a lump sum basis and for unit prices as set forth in the Bid Form.
- A. Bidders shall submit a Bid on a lump sum basis for the base Bid and include a separate price for each alternate described in the Bidding Documents as provided for in the Bid Form. The price for each alternate will be the amount added to or deleted from the base Bid if City selects the alternate. In the comparison of Bids, alternates will be applied in the same order as listed in the Bid form.

##### *14.02 Unit Price*

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

- B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

#### 14.03 Allowances

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

#### 14.04 Completion Time Comparisons

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

### **ARTICLE 15 – SUBMITTAL OF BID**

- 15.01 With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form, and, if required, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the following documents:

- A. *[See BF-7.01 for a list of documents typically required to be submitted with the Bid.]*

- 15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked sealed envelope marked "**COURT STREET SEWER SEPARATION PROJECT**" shall contain the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to:

City Purchasing Agent  
**COURT STREET SEWER SEPARATION PROJECT**  
City of Bangor  
73 Harlow Street  
Bangor, Maine 04401

## **ARTICLE 16 – WITHDRAWAL OF BIDS**

- 16.01 The City may consider informal any bid not in accordance with the provisions hereof and may waive any informality in, or reject any or all bids. Any bidder may withdraw his bid prior to opening of the bids. Any bid received after the time and date specified will not be considered. No bid may be withdrawn for at least 30 days after receipt of bids unless released by the City.

## **ARTICLE 17 – OPENING OF BIDS**

- 17.01 Bids shall be received in the office of the City Purchasing Agent on or before **March 30, 2016, 2:00 PM**, at which time all bids will be opened and read aloud. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

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

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

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

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

qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work in accordance with the Contract Documents.

- 19.06 The Contract will be awarded to the Contractor submitting the lowest bid. In the case where the Contractor submitting the low bid is found to not be properly qualified to carry out the work, then the Contract will be awarded to the lowest qualified bidder.

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

- 20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth City’s requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to City, it shall be accompanied by such bonds. These bonds shall be on the prescribed forms and shall be furnished by a surety company or companies listed on the current Circular 570 of the U.S. Treasury Department, which company or companies shall also have a record of service satisfactory to the City, shall be authorized to do business in the state of Maine and shall be independent of the Contractor.

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

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

## **ARTICLE 22 – SALES AND USE TAXES**

- 22.01 The City of Bangor is a municipal corporations duly organized under the laws of the state of Maine and therefore is not required to file proof of exemption to the Maine State sales tax.

## **ARTICLE 23 – RETAINAGE**

- 23.01 Provisions concerning Contractor’s rights to deposit securities in lieu of retainage are set forth in the Agreement.

## **ARTICLE 24 – OTHER REQUIREMENTS**

- 24.01 Work Under City Engineer

All work under this project shall be under the direct supervision of the City Engineer and all decisions by the City Engineer pertaining to the new construction shall be final and binding. If initial benchmarks are requested by the Contractor, the engineering staff of the City of Bangor

will establish two benchmarks at no cost to the Contractor; however, it shall be the responsibility of the Contractor to establish and maintain such additional layout as may be required to properly complete the work.

The bidder is hereby notified that the construction terms and conditions set forth in the Contract documents will be rigidly enforced, that it is the intention of the City to maintain full time inspection during the period of construction, and that only first quality materials and workmanship will be accepted. Neither the fact of such inspection, nor the omission thereof, will imply acceptance by the City of any or all of the work performed under this contract or relieve the Contractor of any responsibility for the successful completion of all the terms of this Contract subject to final inspection and review by the City.

#### 24.02 Nondiscrimination in Employment and Labor Standards

Bidders on this work will be required to comply with the President's Executive Order No. 11246 and amendments or supplements to that Order. The requirements for bidders and contractors under this Order are explained in the Information for Bidders.

#### 24.03 Federal Requirements

The Contractor must comply with all the Safety and Health Regulations (CFR29 part 1926 and all subsequent amendments) as promulgated by the US Department of Labor on June 24, 1974, the Department of Labor Regulations relating to Copeland "Anti-Kickback Act (18 U.S.C. 874) as supplemented by 29 CFR part 3, Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by 29 CFR part 5, and Occupational Safety and Health Standards (OSHA) (29 CFR part 1910). The Contractor must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), and Executive Order 11738. Contractors are urged to become familiar with the requirements of these regulations.

#### 24.04 Additional Requirements

Contractor shall comply with SRF Provisions as detailed in Section F, including, but not limited to, Davis Bacon Wage Rate Requirements, DBE Requirements, and American Iron and Steel Requirements.

#### 24.05 Disclaimer

Any awarded contract is expected to be funded, in part, by a State Grant. Neither the State of Maine nor any of its departments, agencies, or employees is or will be a party to this Agreement.

#### 24.06 Suspension and Debarment

The Contractor must comply with Subpart B and Subpart C of 2 CFR Part 180 and Part 1532. By entering into this contract, the contractor certifies that neither the contractor's firm, nor any person or firm who has an interest in the contractor firm, is a Debarred or Suspended person or firm. Furthermore, by entering into this contract, the contractor shall certify that no part of this

contract shall be subcontracted to a Debarred or Suspended person or firm. Contractors may access the federal government's Excluded Parties List System on the internet for verification of excluded parties.

#### 24.07 Gratuities

If Owner finds after a notice and hearing that Contractor, or any of Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of Owner or Agency in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, Owner may, by written notice to Contractor, terminate this Contract. Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract. In the event this Contract is terminated as provided in above paragraph, Owner may pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, Owner may pursue exemplary damages in an amount (as determined by Owner) which shall not be less than three nor more than ten times the costs Contractor incurs in providing any such gratuities to any such officer or employee.

#### 24.08 Bid Protests

All protests arising from the Owner's procurement practices must be submitted to the Owner as soon as practical. The Owner will investigate the basis for the protest, seek the advice of legal counsel, document all meetings and actions, and attempt to resolve the protest promptly and equitably.

## **C. BID FORM AND BID BOND**

# BID FORM FOR CONSTRUCTION CONTRACTS

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

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ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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**BID FORM**

**COURT STREET SEWER SEPARATION PROJECT**

**BID DATE – MARCH 30, 2016, 2:00 PM**

## TABLE OF CONTENTS

	<b>Page</b>
Article 1 – Bid Recipient .....	1
Article 2 – Bidder’s Acknowledgements .....	1
Article 3 – Bidder’s Representations.....	1
Article 4 – Bidder’s Certification.....	2
Article 5 – basis of award .....	3
Article 6 – Basis of Bid .....	3
Article 7 – Time of Completion .....	11
Article 8 – Attachments to This Bid.....	11
Article 9 – Defined Terms .....	12
Article 10 – Bid Submittal.....	13

**ARTICLE 1 – BID RECIPIENT**

1.01 This Bid is submitted to:

City Purchasing Agent  
**COURT STREET SEWER SEPARATION PROJECT**  
73 Harlow Street  
Bangor, Maine 04401

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

**ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS**

2.01 The undersigned, as Bidder, herein referred to as singular and masculine, declares that the only parties interested in the bid as principals are named herein; that this bid is made without collusion with any other person, firm, or corporation; that no officer or agent of the City is directly or indirectly interested in this bid; that he has carefully examined the location of the proposed work, the annexed form of contract, and the plans and specifications therein referred to and he proposes and agrees that if this bid is accepted he will contract with the City, in the form of the copy of the Contract Agreement deposited in the office of the Engineer and attached hereto, to provide all necessary machinery, tools, apparatus, and other means of construction and to do all the work and furnish all the materials specified in this contract in the manner and time therein prescribed, and according to the requirements of the Engineer as therein set forth.

2.02 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 30 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of the City.

**ARTICLE 3 – BIDDER’S REPRESENTATIONS**

3.01 In submitting this Bid, Bidder represents that:

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

<u>Addendum No.</u>	<u>Addendum Date</u>	<u>Contractor’s Signature</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

\*\*(Signature required to acknowledge receipt of each addendum as may be issued. Sign only upon receipt of written addendum.)

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in SC-4.02 as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in SC-4.06 as containing reliable "technical data."
- E. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by City and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- 1. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

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

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
  - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of City, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition;
  - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of City, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
  - 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

**ARTICLE 5 – BASIS OF AWARD**

5.01 The Contract shall be awarded to the Lowest Responsive Bidder. The City reserves the right to reject any or all bids and to waive all irregularities in bidding.

**ARTICLE 6 – BASIS OF BID**

6.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

## BID FORM

To the City of Bangor, Maine, herein called the City, acting through its City Manager for the construction of the **COURT STREET SEWER SEPARATION PROJECT**, together with all related work specified in the specifications, and any other work necessary or incidental thereto.

Item No.	Estimated Quantity	Pay Item, Brief Description; Unit or Lump Sum Price Bid In Both Words and Figures	Total Price In Figures
1.	1 LS	Mobilization / Demobilization the Lump Sum Price of  _____ Dollars  per lump sum (\$_____/LS	          \$ _____
2.	1 LS	Sedimentation and Erosion Control the Lump Sum Price of  _____ Dollars  per lump sum (\$_____/LS	          \$ _____
3.	1 LS	Traffic Management Plan and Maintenance and Protection of Traffic the Lump Sum Price of  _____ Dollars  per lump sum (\$_____/LS	          \$ _____
4.	48 FHR	Flagging Hour Unit Price per Flagger Hour  _____ Dollars  per flagger hour (\$_____/FHR	          \$ _____
5.	500 Pound	Calcium Chloride for Dust Control Unit Price per pound of  _____ Dollars  per pound (\$_____/pound	          \$ _____

Item No.	Estimated Quantity	Brief Description; Unit or Lump Sum Price Bid In Both Words and Figures	Total Price In Figures
6.	1 LS	Temporary Sewer Bypass Connection and Removal the Lump Sum Price of  _____ Dollars  per lump sum (\$_____/LS \$_____	\$_____

**7 Constructing Storm Drains and Sanitary Sewers:**

7.1.	480 LF	6" Ø Sanitary Sewer Laterals Unit Price per linear foot of  _____ Dollars  per linear foot (\$_____/LF	\$_____
------	-----------	---	---------

7.2.	730 LF	24" Ø PVC Sewer Main Unit Price per linear foot of  _____ Dollars  per linear foot (\$_____/LF	\$_____
------	-----------	---	---------

7.3.	175 LF	12" Ø HDPE Storm Drain Unit Price per linear foot of  _____ Dollars  per linear foot (\$_____/LF	\$_____
------	-----------	---	---------

7.4.	835 LF	24" Ø HDPE Storm Drain Unit Price per linear foot of  _____ Dollars  per linear foot (\$_____/LF	\$_____
------	-----------	---	---------

Item No.	Estimated Quantity	Brief Description; Unit or Lump Sum Price Bid In Both Words and Figures	Total Price In Figures
7.5.	25 LF	Remove and Relay Existing 12" Ø HDPE Storm Drain Unit Price per linear foot of  _____ Dollars  per linear foot (\$_____/LF	\$_____

**8 Constructing Precast Concrete Structures:**

8.1.	45 VF	4' Ø Standard Sanitary Sewer or Storm Drain Manhole Unit Price per vertical foot of  _____ Dollars  per vertical foot (\$_____/VF	\$_____
------	----------	--	---------

8.2.	10 VF	5' Ø Standard Sanitary Sewer or Storm Drain Manhole Unit Price per vertical foot of  _____ Dollars  per vertical foot (\$_____/VF	\$_____
------	----------	--	---------

8.3.	75 VF	Precast Concrete Catch Basin Unit Price per vertical foot of  _____ Dollars  per vertical foot (\$_____/VF	\$_____
------	----------	---	---------

8.4.	2 each	Abandon existing Manholes or Catch Basins Unit Price per each abandoned manhole or catch basin  _____ Dollars  per each (\$_____/each	\$_____
------	-----------	--	---------

Item No.	Estimated Quantity	Brief Description; Unit or Lump Sum Price Bid In Both Words and Figures	Total Price In Figures
8.5	1 EA	Modify Existing Catch Basin Unit Price per Each of  _____ Dollars  per Each (\$_____) /EA	\$ _____

9	10 CY	Miscellaneous Earth Excavation *- below normal depth Unit Price per cubic yard of  _____ Dollars  per cubic yard (\$_____) /CY	\$ _____
---	----------	---	----------

10	10 CY	Change in Quantity of Earth Excavation and Backfill Due to Pipe Depth Changes * Unit Price per cubic yard of  _____ Dollars  per cubic yard (\$_____) /CY	\$ _____
----	----------	--	----------

**11 Test Pits:**

11.1.	5* EA	Test Pits (0-5' Depth) * Unit Price per each of  _____ Dollars  per each (\$_____) /EA	\$ _____
-------	----------	---	----------

\*Indicates indeterminate quantity for bidding purposes

Item No.	Estimated Quantity	Brief Description; Unit or Lump Sum Price Bid In Both Words and Figures	Total Price In Figures
11.2.	5* EA	Test Pits (5'-10' Depth) * Unit Price per each of  _____ Dollars  per each (\$_____) /EA	\$ _____
11.3.	2* EA	Test Pits (>10' Depth) * Unit Price per each of  _____ Dollars  per each (\$_____) /EA	\$ _____
12.	10* SY	Rock Excavation and Disposal* Unit Price per cubic yard of (minimum bid \$100.00 per cubic yard)**  _____ Dollars  per cubic yard (\$_____) /CY	\$ _____
13.	1,200 SY	Removal of Bituminous Concrete Pavement Unit Price per square yard of  _____ Dollars  per square yard (\$_____) /SY	\$ _____

\*Indicates indeterminate quantity for bidding purposes

\*\* Bidder must insert minimum price or greater and insert extended item prices.

Item No.	Estimated Quantity	Brief Description; Unit or Lump Sum Price Bid In Both Words and Figures	Total Price In Figures
14.	10* CY	Bank Run Gravel* Unit Price per cubic yard of  _____ Dollars  per cubic yard (\$_____/CY)	\$ _____
15.	10* CY	Crushed Stone or Screened Gravel* Unit Price per cubic yard of  _____ Dollars  per cubic yard (\$_____/CY)	\$ _____
16.	10* CY	Select Borrow* Unit Price per cubic yard of  _____ Dollars  per cubic yard (\$_____/CY)	\$ _____
17.	1,200 SY	Fine Grading of Roadway Subbase Unit Price per square yard of  _____ Dollars  per square yard (\$_____/SY)	\$ _____
18.	10 SY	Loam and Seed Unit Price per square yard of  _____ Dollars  per square yard (\$_____/SY)	\$ _____

\*Indicates indeterminate quantity for bidding purposes

Item No.	Estimated Quantity	Brief Description; Unit or Lump Sum Price Bid In Both Words and Figures	Total Price In Figures
----------	--------------------	---	------------------------

**19 Controlled Low Strength Material CLSM:**

19.1.	10* CY	CLSM for Pipe Abandonment* Unit Price per cubic yard of  _____ Dollars  per cubic yard (\$_____/CY	\$ _____
-------	-----------	---	----------

19.2.	10* CY	CLSM for Backfill and All Other Purposes* Unit Price per cubic yard of  _____ Dollars  per cubic yard (\$_____/CY	\$ _____
-------	-----------	--	----------

20.	10* CY	Misc. 4,000 psi Concrete* Unit Price per cubic yard of  _____ Dollars  per cubic yard (\$_____/CY	\$ _____
-----	-----------	--	----------

**21 Constructing Special Storm Drain and Sanitary Sewer Structures:**

21.1.	1 LS	Boynton Street Sanitary Sewer Connection (SMH-5) the Lump Sum Price of  _____ Dollars  per lump sum (\$_____/LS	\$ _____
-------	---------	--	----------

21.2.	1 LS	Sanitary Sewer Connection to Existing (SMH-6) the Lump Sum Price of  _____ Dollars  per lump sum (\$_____/LS	\$ _____
-------	---------	---	----------

\*Indicates indeterminate quantity for bidding purposes

Item No.	Estimated Quantity	Brief Description; Unit or Lump Sum Price Bid In Both Words and Figures	Total Price In Figures
21.3.	1 LS	Storm Drain Connection (DMH-1) the Lump Sum Price of  _____ Dollars  per lump sum (\$_____/LS	\$_____

Amounts must be shown in both words and figures. In case of discrepancy, the amount in words will govern.

**TOTAL PROJECT BID**

Dollars

and \_\_\_\_\_ Cents

(\$ \_\_\_\_\_ )

Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions.

Bidder acknowledges that any estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

**ARTICLE 7 – TIME OF COMPLETION**

7.01 Bidder agrees that the Work will be substantially complete on or before **October 15, 2016**, and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before **October 15, 2016**.

7.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

**ARTICLE 8 – ATTACHMENTS TO THIS BID**

8.01 The following documents are submitted with and made a condition of this Bid:

- A. Required Bid security in the form of a Bid Bond equal to five percent (5%) of the Bid;
- B. Evidence of authority to do business in the state of Maine; or a written covenant to obtain such license within the time for acceptance of Bids;

## **ARTICLE 9 – DEFINED TERMS**

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

**ARTICLE 10 – BID SUBMITTAL**

10.01 This Bid is submitted by:

If Bidder is:

An Individual

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

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

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

A Partnership

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

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

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

A Corporation

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

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

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

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

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

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

Attest \_\_\_\_\_

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

A Joint Venture

Name of Joint Venture: \_\_\_\_\_

First Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of first joint venture partner -- attach evidence of authority to sign)

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

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

Second Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of second joint venture partner -- attach evidence of authority to sign)

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

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

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

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

\_\_\_\_\_

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

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

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

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

If this Bid is accepted by the City and the Bidder fails to contract as aforesaid and to give a bond in the sum of the full amount of the Bid, with surety satisfactory to the City, within 10 days (not including Sundays or legal holidays) to an address given herewith that the Contract is ready for signature, then the City may by option determine that the Bidder has abandoned the Contract and therefore the Bid and Acceptance shall be null and void, and the bid bond shall be forfeited to the City.

**BID BOND**

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

BIDDER (*Name and Address*):

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

CITY (*Name and Address*):

The City of Bangor  
73 Harlow Street  
Bangor, ME 04401

BID

Bid Due Date: **March 30, 2016, 2:00 PM**  
Description (*Project Name and Include Location*):  
Court Street Sewer Separation Project, Bangor, ME

BOND

Bond Number:  
Date (*Not earlier than Bid due date*):  
Penal sum \_\_\_\_\_

(Words)

\$

(Figures)

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

**BIDDER**

**SURETY**

(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: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.*

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

## **D. CONTRACT AGREEMENT**

**FORM OF AGREEMENT  
BETWEEN CITY, AND CONTRACTOR FOR  
CONSTRUCTION CONTRACT (STIPULATED PRICE)  
FUNDING AGENCY EDITION**

*Prepared by*

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly By

**ACEC**

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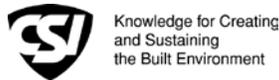
This document has been approved and endorsed by

The Associated General Contractors of America



and the

Construction Specification Institute



This document has been accepted by  
United States Department of Agriculture  
Rural Utilities Service, Water and Waste Programs

This Suggested Form of Agreement has been prepared for use with the Standard General Conditions of the Construction Contract, Funding Agency Edition (No. C-710, 2002 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. The language contained in the Suggested Instructions to Bidders (No. C-200, 2002 Edition) is also carefully interrelated with the language of this Agreement. Their usage is discussed in the Commentary on EJCDC Construction Documents. See also Guide to the Preparation of Supplementary Conditions (No. C-800, 2002 Edition).

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**FORM OF AGREEMENT  
BETWEEN CITY, AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)  
FUNDING AGENCY EDITION**

THIS AGREEMENT is by and between \_\_\_\_\_ City of Bangor \_\_\_\_\_ (“City”) and  
\_\_\_\_\_  
\_\_\_\_\_ (“Contractor”).

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents.

**ARTICLE 2 – THE PROJECT**

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

Court Street Sewer Separation Project

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by AECOM Technical Services, Inc.. All work is to be performed under the City Engineer who will act as City’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

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

4.02 *Days to Achieve Substantial Completion and Final Payment*

The Work will be substantially completed on or before October 15, 2016.

4.03 *Liquidated Damages*

A. Contractor, and City 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 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by 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 to the City \$1,000 for each day that expires after the



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

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

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

### 6.02 *Progress Payments; Retainage*

- A. City shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment each month during performance of the Work as provided in Paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or City may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:
  - a. 95 percent of Work completed (with the balance being retainage); and
  - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, City shall pay an amount sufficient to increase total payments to Contractor to ~~95~~ 98 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and CWSRF Supplementary Conditions. Two percent (2%) of the total Work completed shall be retained for a period of 1 year from the date of substantial completion.

### 6.03 *Final Payment*

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

## ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum legal rate.

## ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce City to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the General Conditions.
- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by City and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### 9.01 *Contents*

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to 17, inclusive).
  - 2. Performance bond
  - 3. Payment bond
  - 4. Notice to Contractor
  - 5. General Conditions

6. Supplementary Conditions
  7. Specifications as listed in the table of contents of the Project Manual.
  8. Drawings consisting of 10 sheets with each sheet bearing the following general title: Court Street Sewer Separation Project.
  9. Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  10. Information for Bidders
  11. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid
    - b. Documentation submitted by Contractor prior to Notice of Award
  12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Notice to Proceed
    - b. Work Change Directives.
    - c. Change Order(s).
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### 10.01 *Terms*

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

### 10.02 *Assignment of Contract*

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

10.03 *Successors and Assigns*

- A. 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 to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

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

10.05 *Other Provisions – City of Bangor*

**ARTICLE 10.1 - Statement of the Work**

The Contractor shall furnish the materials and perform the work for the City for the consideration set forth in the Bid and in strict accordance with the Contract, as the word "Contract" is hereinafter defined.

**ARTICLE 10.2 – Definitions**

The following terms and/or the singular, masculine pronouns used in their place, shall have the following meanings within the context of this Contract:

- City - The City of Bangor, Maine acting through its duly authorized representatives.
- Engineer - The Bangor City Engineer or his duly authorized representatives.
- Contractor - The individual, firm, or corporation to whom the contract has been awarded whether acting on his own or through subcontractors or employees.

**ARTICLE 10.3 - Obligations and Liability of the Contractor**

The Contractor shall furnish all labor, materials, tools and appliances, except as may be otherwise specified herein, and all else necessary for or incidental to the proper performance and completion of all work required by this Contract in the manner and within the time herein specified. He shall complete the entire work subject to the direction of the Engineer and to the Engineer's complete satisfaction in accordance with the specifications and plans which are a part hereof, at the prices herein agreed upon and fixed therefore.

The Contractor shall conduct his work in such manner as to interfere as little as possible with private business and/or public travel and to protect both life and property. He shall, at his own expense, provide all necessary fences, barricades, lights, watchmen, flagmen, traffic directors, etc. and shall take any and all such other precautionary measures as common sense might dictate or as may be required by the City Engineer. The Contractor will be held solely liable for any and all damages occasioned in any way by his act or failure to act, or by any such action or negligence on the part of his agents, employees, suppliers, or workmen.

The Contractor shall take full responsibility for the work done under this Contract, for the protection of all such work, and for the prevention of injuries to persons and/or damage to property, including utilities, on or about the work site. He shall, under no circumstances, be relieved of his responsibility by any right of the City Engineer to give permission or issue orders relating to any part of the work, or by any such permission given, or by the failure of the Engineer to issue any such orders. The Contractor shall bear any and all losses resulting to him or to the City on account of the amount or character of the work, or because the nature of the land in or on which the work is done is different from what was estimated or expected, or on account of the weather, elements, acts of God, or any other causes whatsoever. The Contractor shall assume the defense of any and all claims of any nature whatsoever against the Contractor or the City, and shall indemnify, save harmless, and insure the City and City's officers and/or agents against all claims arising out of injury or damage to persons, corporations, or property whether such claims arise out of negligence or not, or whether said claims are for unavoidable damage or not, and from all claims relating to labor and /or materials furnished for the work. The Contractor will not be required to indemnify the City against damage or claims occasioned by acts of the City.



\$100,000. disease - each employee

- b. Comprehensive General Liability (Public Liability) Insurance including:
  - General Liability \$1,000,000. aggregate
  - Products, Completed Operations \$1,000,000. aggregate
  - Personal & Advertising Injury \$ 500,000.
  - Each Occurrence \$ 500,000.
  - Fire Damage \$ 50,000. any one fire
  - Medical Expense \$ 5,000. any one person
- c. Automobile Liability Insurance (owned, hired & non-owned):
  - Bodily Injury & \$1,000,000 combined
  - Property Damage single limit
- d. The Contractor shall provide a waiver of any rights of subrogation which the Contractor may have against the City, their agents or their employees.
- e. Before any of the work is started under the contract, the Contractor shall file with the Purchasing Department of the City a certificate of insurance containing the following information in respect to all insurance carried:
  - (1) Name of insurance company, policy number and expiration date;
  - (2) The coverages required and the limits on each, including the amount of deductible or self-insured retentions (which shall be for the account of the Contractor);
  - (3) A statement indicating that the City shall receive thirty (30) days notice of cancellation or significant modification of any of the policies which may affect the City's interest; and
  - (4) The City as an additional insured (except Workers' Compensation Insurance).

**ARTICLE 10.8 - Patents**

The Contractor shall indemnify and save harmless the City, and all persons acting for or on behalf of the City, from all claims and liability of any nature or kind including costs and expenses arising from or occasioned by any infringement or alleged infringement of patent rights on any invention, process, article or apparatus, or any part thereof, furnished and installed by said Contractor or arising from or occasioned by the use or manufacture thereof, including their use by the City.

**ARTICLE 10.9 - Compliance with Laws**

The Contractor shall keep himself fully informed of all existing and future state and national laws and municipal ordinances and all regulations in any manner affecting those engaged or employed in the work, or the materials used in the work, or in any way affecting the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the plans, specifications, or elsewhere in this Contract in relation to any such law, ordinance, regulation, order or decree, he shall forthwith report the same to the Engineer in writing. He shall at all times himself observe and comply with, and cause all his agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the City and all officers and agents of the City against any claim arising from or based upon violation of any such laws, ordinances, regulations, orders or decrees, whether by himself or his employees.

**ARTICLE 10.10 – Permits**

The Contractor shall, at his own expense, obtain all necessary permits from the county, municipal, and/or other public authorities; he shall give all notices required by law or ordinances; and he shall post all bonds and pay all fees and charges incident to the due and lawful prosecution of the work covered by this Contract.

**ARTICLE 10.11 - Contractor Not to Sublet or Assign**

The Contractor shall give his personal attention constantly to the faithful prosecution of the work, shall keep the same under his personal control, and shall not assign by power of attorney or otherwise, nor sublet the work or any part thereof without the previous written consent of the City, and shall not either legally or equitably assign any of the moneys payable under this agreement, or his claim thereto, unless by and with the like consent of the City and the surety on the bond(s).

**ARTICLE 10.12 - Time of Beginning Work**

Except as herein provided, the Contractor shall commence work at such points as the Engineer may direct or approve, within ten (10) days after the date of the notice to proceed from the City. Such time of starting may be postponed but only by written agreement between the City, and Contractor and then only because of expected delays in receipt of materials and equipment, or if the season be unsuitable for commencement of the work, or because of other contingency clearly beyond the control or responsibility of the Contractor.

**ARTICLE 10.13 - Delay by City**

The City may delay the beginning of the work or any part thereof if the necessary lands or rights-of-way for such work shall not have been obtained by the City or if necessary materials or equipment to be furnished by the City are not delivered. The Contractor shall have no claim for damages on account of such delay, but shall be entitled to so much additional time wherein to perform and complete this contract as the Engineer shall certify in writing to be just.

**ARTICLE 10.14 - Liquidated Damages**

In case the Contractor fails satisfactorily to complete the entire work, or any phase of the work, contemplated and provided for under this Contract on or before the date of completion determined as described elsewhere herein, the City shall deduct from the payments otherwise due the Contractor each month the sum of One Thousand Dollars (\$1,000.00) for each calendar day, excluding only Sundays and legal holidays, of delay, which sum is agreed upon not as a penalty but as fixed and liquidated damages for each day of such delay to be paid in full and subject to no deduction. If the payments otherwise due the Contractor are less than the amount of such liquidated damages, said damages shall be deducted from any other moneys due or to become due the Contractor, and in case such damages shall exceed the amount of all moneys due or to become due the Contractor then the Contractor or his surety shall pay the balance to the City, as appropriate.

**ARTICLE 10.15 - Night and Sunday Work**

No night work requiring the presence of the Engineer or inspector will be permitted except in the case of emergency and then only to such an extent as is absolutely necessary and with written permission of the Engineer. In the case of a regular gang organized specifically for regular and continuous night work this clause may be waived but only when so specified elsewhere herein or when such work shall be deemed necessary and/or beneficial to the City by the Engineer, provision for night time inspection and payment therefore has been made and agreed upon by the Contractor and the Engineer, and the foregoing has been certified in writing by the Engineer.

No Sunday work will be permitted except in the case of great emergency and then only with the written consent of the Engineer and only to such an extent as he may judge necessary.

**ARTICLE 10.16 - Contractor to Employ Competent Workers**

The Contractor shall employ only competent workers and whenever the Engineer shall notify the Contractor in writing that any person or persons employed under this Contract are, in his opinion, incompetent, unfaithful, disorderly, or in any other way unsatisfactory or not employed in accordance with the provisions of this Contract, then such person or persons shall be discharged from work under this Contract and shall not again be employed under this Contract except by written consent of the Engineer.

**ARTICLE 10.17 - Contractor to Employ Sufficient Labor and Equipment**

If, in the opinion of the Engineer, the Contractor is not employing sufficient labor or equipment to complete this Contract satisfactorily and within the time specified, the Engineer will so notify the Contractor in writing and the Contractor shall, immediately upon receipt of such notice, employ such additional labor and/or equipment as may be deemed necessary by the Engineer.

**ARTICLE 10.18 - Intoxicating Substances**

The Contractor shall neither permit on site nor suffer the introduction or use on site of alcoholic beverages, drugs, or other controlled substances which might in any way impair the judgment, alertness, or efficiency of any person or persons employed under this Contract or which might be used in violation of any State or Federal law or local ordinance.

**ARTICLE 10.19 - Access to Work**

The City, the Engineer, and their agents and employees shall be permitted access to all parts of the manufacturing work site at all times throughout the duration of this Contract, and the Contractor shall at all times provide safe and proper facilities therefore.

**ARTICLE 10.20 - Examination of Work**

The Engineer shall be furnished with every reasonable facility for ascertaining that all work is in accordance with the requirements and intent of this Contract, even to the extent of uncovering or taking down portions of finished work.

Should the work thus exposed or examined prove satisfactory, the uncovering or taking down and the replacement material and rebuilding of the work shall be considered as extra work, as defined and provided for elsewhere herein, unless the original work was done in the absence of the Engineer or his inspector without the Engineer's written authorization. In the latter case, and/or if unsatisfactory work should be so uncovered, then all such uncovering, taking down, replacement, and rebuilding, together with the repair or replacement of any and all such unsatisfactory work as may have been so uncovered, will be at the Contractor's sole cost and expense.

**ARTICLE 10.21 - Defective Work**

Inspection of the work by the Engineer and/or his agents shall neither imply that all such work will prove acceptable to the City nor will it relieve the Contractor from any obligations or responsibility whatsoever under the terms of this Contract. Any and all defective work and/or materials shall be replaced by the Contractor, at his sole expense, at any time prior to final acceptance of the work as such may be discovered, regardless of whether such work has previously been inspected and/or included in estimates for partial payment. Any material furnished by the Contractor which shall be judged by the Engineer, at any time, to be defective and/or not in conformance with the specifications shall be immediately removed from the site and replaced at the Contractor's sole cost and expense, as shall any materials or goods furnished by the City which have been, in the opinion of the Engineer, damaged by the Contractor, his agents or employees.

**ARTICLE 10.22 - Protection Against Water and Storm**

The Contractor shall take all necessary precautions to prevent damage to the work by storms or by water entering the work site directly or through the ground. In case of damage by storms or water, the Contractor shall make such repairs and/or replacements or rebuild such parts of the work as the Engineer may require in order that the finished work shall be completed in full accord with the plans and specifications.

The Engineer may prohibit the carrying out of any work at any time that, in his judgment, the conditions are not suitable or the proper precautions are not being taken, whatever the weather or season may be.

**ARTICLE 10.23 - Mistakes of the Contractor**

The Contractor shall pay to the City all expenses, losses, and/or damages, as determined by the Engineer, incurred in consequence of any defect, omission, or mistake of the Contractor, his agents or employees, or the making good thereof.

**ARTICLE 10.24 - Right to Materials**

Nothing in this Contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the work or the soil, but all such materials shall, upon being so attached or affixed, become the property of the City.

**ARTICLE 10.25 - Alterations**

The Engineer may make alterations in the line, grade, plan, form, dimensions or materials of the work or any part thereof, either before or after the commencement of construction. If such alterations increase or diminish the quantity of work to be done, adjustment for such increase or decrease shall be made at the unit prices stipulated for such work under this contract, except that if unit prices are not stipulated for such work, compensation for increased work will be made under the provisions for Extra Work made elsewhere herein, and for decreased work the Contractor shall allow the City a reasonable credit as determined by the Engineer. If such alterations diminish the quantity of work to be done, they shall not warrant any claim for damages or for anticipated profits on the work that is dispensed with.

**ARTICLE 10.26 - Extra Work**

The Contractor shall do any work incidental to the proper completion of the Contract not otherwise provided for when and as so ordered, in writing, by the Engineer, either (a) at a price agreed upon before the work is commenced and named in the written order for the work, or (b) if the Engineer so elects, for the reasonable cost of said work, as determined by the Engineer, plus fifteen (15) percent of such cost. No extra work will be paid for unless specifically ordered as such by the Engineer in writing.

The Contractor shall, when so requested by the Engineer, furnish itemized statements of the cost of the work ordered, and shall give the Engineer access to the accounts, bills, and vouchers relating thereto.

The Engineer shall include in the cost of extra work under (b) above the reasonable cost to the Contractor of all materials used, of all labor common and skilled and of foremen, and the fair rental of all machinery used upon the extra work for the period of such use.

The fair rental for all machinery shall be based upon the most recent edition of "Compilation of Rental Rates for Construction Equipment" as published by the Associated Equipment Distributors, rental rates established by the Maine State Department of Transportation, or similar publication approved by the Engineer. Rental for machinery which was upon the work site immediately before, or which will be required by or used upon the work after the extra work is done, shall be based upon an appropriate fraction of the approved monthly rate schedule. If said work requires the use of machinery not upon the work site or otherwise to be used upon the work, then the cost of transportation, not exceeding a total round trip distance of 150 miles, of such machinery to and from the work shall be added to the fair rental as accepted by the Engineer.

The Engineer shall include in the cost of extra work the cost to the Contractor of additional premiums paid on the required insurance on account of such extra work, and the cost of Social Security and/or other direct assessment upon the Contractor's payroll by Federal or other properly authorized public agencies. The Engineer shall not include in the cost of extra work any cost or rental of small tools, buildings, or any portion of the time of the Contractor or his superintendent, or any allowance for use of capital or the premium on the bond as assessed upon the amount of extra work, these items being considered as being covered by the fifteen (15) percent added to the reasonable cost.

**ARTICLE 10.27 - Extension of Time on Account of Extra Work**

When extra work ordered at any time during the progress of the work is such as to require, in the opinion of the Engineer, an unavoidable increase in the amount of time necessary for completion of the Contract, then a suitable extension of time will be added to the completion date.

**ARTICLE 10.28 - Changes not to Affect Bond**

It is distinctly agreed and understood that any changes made in or to the plans and/or specifications, whether the amount of work do be done under this Contract should thereby be affected or not, or any change or changes in the manner or time of payments made by the City to the Contractor, shall in nowise annul, release, or affect the liability and/or surety on the bond or bonds provided by the Contractor.

**ARTICLE 10.29 - Claims for Damages**

If the Contractor claims compensation for any damages sustained by breach of Contract or otherwise, be the same based on claims that due and full credit has not been given the Contractor for work performed or materials furnished in accordance with the terms of the Contract or for any other cause, he shall, promptly after the sustaining of any such damage, make a written statement to the Engineer of the nature of the damage sustained and shall, on or before the fifteenth day of the month following that in which the damage shall have been sustained, file with the Engineer an itemized statement of the details and amount of such damage. Unless such statement is made in such time and manner as thus required his claim for compensation will be forfeited and invalidated and he will not be entitled to payment on account of any such damage.

**ARTICLE 10.30 - Abandonment of Work**

If the work to be done under this Contract shall be abandoned, or if this Contract or any part thereof shall be sublet without the previous written consent of the City, or if the Contract or any claim thereunder shall be assigned by the Contractor otherwise than as herein specified, or if at any time the Engineer shall be of the opinion, and shall so certify in writing, that the conditions herein specified as to the rate of progress of work under this Contract are not fulfilled, or that the work or any part thereof is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of this Contract, the City may notify the Contractor by a written order with a copy to the home office of the surety to discontinue all work or any part thereof, and thereupon the Contractor shall discontinue such work or such part thereof as the City may designate, and the City may thereupon, by contract or otherwise, as the City may determine, complete the work or any part thereof, and charge the entire expense of completing such work or part thereof to the Contractor; and for such completion the City, or such contractors as the City may employ, may take possession of and use or cause to be used in the completion of the work or part thereof, any of such materials, equipment, machinery, implements and tools of every description as may be found at the location of said work.

Any and all costs or expenses, including liquidated damages as specified elsewhere herein, incurred by the City under this article shall be deducted and paid out of any moneys then due or to become due the Contractor under this Contract, or any part thereof; and in such accounting the City shall not be held to obtain the lowest figures for the work of completing the Contract or any part thereof, or for insuring its proper completion, but all sums actually paid therefor shall be charged to the Contractor. If the aforementioned costs and expenses so incurred, coupled with payments already made to the Contractor, shall exceed the amount which would have been payable under this Contract if the same had been completed by the Contractor, then the Contractor or the Contractor's surety shall pay the full amount of any such excess to the City as appropriate.

**ARTICLE 10.31 - Prices for Work**

The City will pay and the Contractor shall accept the prices stipulated in the bid as full and just compensation for everything furnished and done by the Contractor, and for any and all expenses of any nature incurred by the Contractor in completing properly and to the entire satisfaction of the City all work under this Contract, including any losses or damages incurred by the Contractor as a result of work under this Contract and excepting only such expenses, losses, etc. for which other provisions are specifically made elsewhere herein.

**ARTICLE 10.32 - Money may be Retained**

The City may keep any moneys which would otherwise be payable at any time hereunder, and may apply the same, or so much as may be necessary therefor, to the payment of expenses, losses or damages incurred by the City and determined as herein provided, and may retain, until all claims are settled, so much of such money as, in the City's opinion, will be required to settle all claims filed with the City relating to this Contract.

**ARTICLE 10.33 - Progress Estimates**

Except as hereinafter provided, the Engineer shall, once in each month, make an estimate in writing of the total amount of the work done to the first of the month, and the amount earned by the Contractor. The City will retain five (5) percent of such estimated value as part security for fulfillment of this Contract by the Contractor and shall deduct from the balance all previous payments and all sums to be retained under this and/or other provisions of this Contract. The City shall pay to the Contractor each month the balance not retained as aforesaid, except that such monthly payment may be withheld at any time if the work, in the opinion of the Engineer, is not proceeding expeditiously and in accordance with the Contract. The City may, if it is deemed expedient to do so, cause estimates and payments to be made more frequently than once a month.

Estimates of lump sum items will be based on the Engineer's estimate of the percentage of each such item completed, each such percentage to be applied to the appropriate lump sum price as set forth on the Bid Form.

Payment for materials will not be made unless and until such materials have been satisfactorily installed or otherwise incorporated into the work.

**ARTICLE 10.34 - Final Estimate and Payment**

The Engineer shall, as soon as practicable following the completion of work under this Contract, make a final estimate in writing of the total amounts of such work done under the various items contained in the bid and of the total amount of money due the Contractor for said work, and he shall also fix the date of substantial completion of such work and incorporate same into said final estimate.

The City will pay to the Contractor the entire sum so found to be due hereunder, including the five (5) percent interim retainage withheld from previous payments, after deducting from said entire sum all previous payments, a retainage of two (2) percent as guaranty for a period of one year following the certified date of substantial completion unless said guaranty is specifically waived in writing by the City, and any and all other amounts as may be retained under the various provisions of this Contract. Such payment shall be made not later than fifteen (15) days after, but in no event before, the expiration of the time within which claims for labor performed and materials used or employed must be entered under the Lien Law, or if such time is not specified by law, the expiration of 30 days after the aforementioned date of substantial completion.

All prior progress estimates and payments shall be subject to correction in the final estimate and payment.

**ARTICLE 10.35 - Liens**

If, at any time before the expiration of the period within which claims must be entered under the Lien Law or, if not otherwise specified by law, within thirty (30) days after the certified date of substantial completion of all work under this Contract, any

person, corporation, firm or other legal entity shall claim to have performed any of the work or to have furnished any of the materials under this Contract and shall file with the City suitable notice, the City will retain until discharge of such notice sufficient money to satisfy and discharge the amount claimed to be due in such notice together with the cost of any action or actions brought to enforce such lien created by the filing of such notice.

**ARTICLE 10.36 - Waivers**

Neither inspection by the or any agents thereof, nor any orders, measurement or certificate by the Engineer, nor any order by the City for the payment of money, nor any payment for or acceptance of the whole or any part of the work performed under this Contract by the City, nor any extension of time nor any possession taken by City or agents thereof shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach. Any remedy provided in this Contract shall be taken and construed as cumulative, that is, in addition to each and every other remedy herein provided, and in addition to all other suits, actions, or legal proceedings. The City shall also be entitled as of right to a writ of injunction against any breach of any of the provisions of this Contract.

**ARTICLE 10.37 - Indemnification**

The contractor shall indemnify, defend and hold harmless the City from and against all claims and actions, and all expenses incidental to such claims or actions, based upon or arising out of damage to property or injuries to persons or other tortious acts caused or contributed to by the Contractor or anyone acting under his direction or control or in his behalf in the course of his performance under this Contract, provided the Contractor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon the sole negligence of the City.

The Contractor hereby expressly agrees that he will defend, indemnify and hold the City harmless from any and all claims made or asserted by the Contractor's agents, servants or employees arising out of the Contractor's activities under this Contract. For this purpose, the Contractor hereby expressly waives any and all immunity he may have under Maine's Workers Compensation Act in regard to such claims made or asserted by the Contractor's agents, servants or employees. The indemnification provided under this paragraph shall extend to and include any and all costs incurred by the City to answer, investigate, defend and settle all such claims, including but not limited to the City's costs for attorneys fees, expert and other witness fees, the cost of investigators, and payment in full of any and all judgments rendered in favor of the

Contractor's agents, servants or employees against the City in regard to claims made or asserted by such agents, servants or employees.

**ARTICLE 10.38 - Liability of City**

No person, firm, corporation or other legal entity other than the Contractor now has any interest hereunder, and no claim shall be made or be valid, and neither the City nor any agent of the City shall be liable for or be held to pay any money except as herein provided. The acceptance by the Contractor of the payment of the final estimate shall operate as and shall be a release to the City, and every agent of the City, from all claim and liability to the Contractor for anything done or furnished for, or relating to the work performed under this Contract, or for any act or neglect of the City or of any person relating to or affecting said work except the claim against the City for the remainder, if any there be, of the amounts kept or retained as provided elsewhere herein.

**ARTICLE 10.39 - Guaranty**

The Contractor guarantees that the work to be done under this Contract and the materials to be furnished by him for use in the construction of same will be free from defects or flaws. This guaranty shall remain in effect for a period of one year from the certified date of substantial completion of all work under this Contract. It is agreed and understood, however, that this guaranty shall not include any repairs made necessary by any cause or causes other than defective work or materials furnished by the Contractor.

As surety of this guaranty the City will retain, at the time of payment of the final estimate, an amount equal to three (3) percent of the total final Contract amount. If at any time within said period of guaranty any part of the work constructed under this Contract shall require repairs because of, in the opinion of the Engineer, defective workmanship and/or materials, then the City may notify the Contractor in writing by certified mail, return receipt requested, of his obligation to make such repairs. Should the Contractor fail to make such repairs to the complete satisfaction of the City within ten (10) calendar days of receipt of such notice, then the City may elect to employ others to make said repairs and to pay for same out of the sum retained hereby for that purpose. Upon

the expiration of the period of guaranty the Engineer will inspect the work, or cause same to be inspected, and upon his determination that the work is in good order the retainage, less any amount which may have been expended in the making of repairs, will be released upon receipt of invoice from the Contractor.

It is agreed and understood, however, that the City may keep the whole or any portion of the sum retained for settlement of any and all claims which may have arisen out of this Contract against the City or agents thereof, and for any and all expenses, losses, or damages incurred by the City by reason of said claims.

**ARTICLE 10.40 - Legal Address of Contractor**

Both the address given in the bid and the Contractor's temporary field office are hereby designated as places to which letters, notices and other communications to the Contractor may be mailed or delivered. The first named address may be changed at any time, in writing, by the Contractor.

**ARTICLE 10.41 - Progress Schedule**

The Contractor shall, within five (5) days of commencement of Work, prepare and submit to the Engineer for approval a practicable schedule showing the order in which the Contractor proposes to carry on the work, the date on which he will start the several salient features thereof, and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion at any time and shall be acceptable to the Engineer. If, in the opinion of the Engineer, the Contractor falls behind such schedule, the Contractor shall take any and all such steps as may be deemed necessary by the Engineer to improve his progress toward completion of the work and shall submit and maintain such supplemental schedules as the Engineer may deem necessary to demonstrate that all work under this Contract will be completed within the time and/or by such completion date as may be specified elsewhere herein. None of the foregoing shall result in any additional cost to the City.

**ARTICLE 10.42 - Site Investigation**

The Contractor acknowledges that he has satisfied himself as to the nature and location of the work, the general and local conditions including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and condition of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the City as well as from information presented by the plans and specifications hereof. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully completing the work. The City assume no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available to him.

**ARTICLE 10.43 - Protection of Existing Utilities**

Existing utilities, structures, or other works that may be shown on the plans, reasonably located or anticipated by a site investigation, or marked on the ground or in any other way by the City or by the respective utility companies shall be protected from damage by the Contractor during construction operations and, if damaged, shall be repaired by the Contractor at his sole expense. It will be the Contractor's sole responsibility to contact the Dig Safe Center at 888-DIG-SAFE and to assure that any and all utility companies in the project area have been notified, furnished with sufficient information, and have located on the ground their respective underground utilities in any area(s) where excavation will occur, all prior to commencement of any such excavation.

Materials below existing utilities which are removed or disturbed during excavation shall be replaced and thoroughly compacted to prevent future settlement and damage to the utility. Utilities damaged due to subsequent settlement of the backfill or of any materials disturbed by the Contractor shall be repaired by the Contractor, or as otherwise required by the utility company, at the Contractor's sole expense.

The locations of certain existing subsurface pipes and utilities are indicated on the plans to the best of the City's knowledge but they are approximate only and no guarantee is made either to the accuracy or completeness thereof. It is the Contractor's absolute responsibility to determine to his best ability the existence and location of any and all underground utilities prior to commencement of excavation and to exercise such precautions during excavation as may be necessary to compensate for any incompleteness or inaccuracy of such determination. Should the scope of work under this contract be substantially altered because

of the existence of subsurface utilities not shown on the plans or reasonably anticipated by the Contractor at the time of bidding hereon, then the contract price may be adjusted accordingly by the City but the mere fact of damage by the Contractor to an existing utility, whether shown on the plans or not, shall under no circumstances result in extra compensation to the Contractor by the City, and all necessary repairs together with any and all related costs, damages, and/or claims related thereto or arising therefrom will be the Contractor's sole responsibility and shall be made and/or otherwise satisfied at the Contractor's sole expense.

IN WITNESS WHEREOF, City, and Contractor have signed this Agreement in five copies. One counterpart each has been delivered to City, Contractor, Engineer, and Agency. All portions of the Contract Documents have been signed, initialed, or identified by City and Contractor or identified by Engineer on their behalf.

This Agreement is dated \_\_\_\_\_. ~~This Agreement shall not be effective unless and until Agency's designated representative concurs.~~

CITY:

\_\_\_\_\_

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

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

[CORPORATE SEAL]

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

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

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Agent for service of process:

\_\_\_\_\_

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

Agency Concurrence:

~~As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.~~

Agency: \_\_\_\_\_

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

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

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

CONTRACTOR:

\_\_\_\_\_

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

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

[CORPORATE SEAL]

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

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

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Agent for service of process:

\_\_\_\_\_

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

~~As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.~~

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

## **E. SPECIAL PROVISIONS**

**SECTION E**  
**SPECIAL PROVISIONS**

**Consent Decree**

All contractors and subcontractors are hereby notified that the City of Bangor has entered into a Consent Decree with the United States and the State of Maine. For the purposes of the Consent Decree, contractors and subcontractors are deemed agents of the City. Any and all work performed by contractors and subcontractors must conform with the terms of the Consent Decree. Contractors must familiarize themselves with the contents of the document and must make the document available to all subcontractors. This document is available electronically at:

[http://www.bangormaine.gov/filestorage/318/350/7758/ENV\\_ENFORCEMENT.PDF](http://www.bangormaine.gov/filestorage/318/350/7758/ENV_ENFORCEMENT.PDF)

or in hard-copy in the City of Bangor's Engineering Department.

**Customer, Driveway, and Street Access**

The Contractor shall maintain customer access to adjacent property at all times. The Contractor shall make every effort to plan work so that adjacent property owners shall have driveway access to their properties at all times during non-working hours, and as much as possible during working hours. The Contractor shall use every effort to cooperate with adjacent property owners on their need to access their property. The Contractor shall notify the Bangor Police and Fire Departments at least four hours in advance of any necessary cutting off of access by emergency vehicles. Every effort shall be made to keep streets open to emergency vehicles at all times.

**Time and Material Payment**

If, at any time during the construction of the project, a situation occurs where payment for work performed cannot be paid for under pay items in the Contract, then the Contractor may request payment on a time and materials basis. All labor and equipment rates, crew sizes, equipment and materials used, and other factors affecting the work shall be approved by the Resident Engineer before work commences. The Contractor and Engineer shall agree to and record hours worked, crew and equipment used, and all materials used at the end of each working day. Requests for time and materials payment after the fact may not be considered for payment if the Resident Engineer was not properly notified.

**Notification of Property Owners**

Every effort shall be made to keep adjacent property owners fully informed of pending interruptions to access or service. The Contractor shall be responsible for notifying the Resident Engineer in advance of any pending operations which may affect adjacent property, including but not limited to the cutting off of driveway access, the disconnection of sewer service laterals, or blasting operations. It will be the Resident Engineer's responsibility to communicate with the property owner or tenants; if such interruptions are

to take place during the absence of the Resident Engineer, then the Contractor shall communicate directly with the property owner.

### **References**

The apparent low Bidder shall furnish the City Engineer with references from at least three similar projects within three working days of the bid opening date. References must be for projects in neighborhoods similar in dollar value and scope of work to the project proposed herein. If, in the opinion of the City Engineer, the Contractor does not have prior work experience in successfully completing projects of this scope, then the City Engineer may recommend rejection of the bid and recommend award of the contract to the next qualified Bidder.

### **Housekeeping**

At the conclusion of each working day, the contractor shall take necessary measures to leave the site in suitable condition, including but not limited to, sweeping, dust control, and removal of equipment or large construction debris that block normal access ways.

### **As-Built Drawings**

The Contractor shall keep a set of "As-Built" drawings on the job site for the Resident Inspector's review that shall show all work up to one week prior to the date of inspection. The Resident Inspector may examine the drawings on a weekly or monthly basis at his own discretion. **If the "As Built" drawings are not kept up to date as the work progresses, then the monthly payment requisition will not be processed for payment until the "As-Builts" have been brought up to date.**

### **Other Provisions**

The work under this project is funded by the Maine CWSRF fund and is subject to special provisions. These have been included as Section F, "SRF Provisions", and Section G, "Standard General Conditions of the Construction Contract". In accordance with the 2014 Consolidated Appropriations Act, all iron and steel materials used as part of this project must be manufactured in the United States.

## **F. SRF PROVISIONS**

## **SECTION F**

### **SRF PROVISIONS**

The following provisions, included as Section F, shall be incorporated into and apply to this contract document:

1. DAVIS BACON REQUIREMENTS
2. DBE PARTICIPATION
3. DISCLOSURE OF LOBBYING ACTIVITIES
4. USE OF IRON AND STEEL
5. PROJECT SIGN

## LABOR STANDARDS INTERVIEW

CONTRACT NUMBER				EMPLOYEE INFORMATION				
NAME OF PRIME CONTRACTOR				LAST NAME		FIRST NAME		MI
				STREET ADDRESS				
NAME OF EMPLOYER				CITY		STATE	ZIP CODE	
				SUPERVISOR'S NAME		WORK CLASSIFICATION		WAGE RATE
LAST NAME		FIRST NAME		MI				

ACTION	CHECK BELOW	
	YES	NO
Do you work over 8 hours per day?		
Do you work over 40 hours per week?		
Are you paid at least time and a half for overtime hours?		
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?		
WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?		

HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?	TOOLS YOU USE	
DATE OF LAST WORK DAY BEFORE INTERVIEW (YYMMDD)		
DATE YOU BEGAN WORK ON THIS PROJECT (YYMMDD)		

THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE

EMPLOYEE'S SIGNATURE			DATE (YYMMDD)
INTERVIEWER	SIGNATURE	TYPED OR PRINTED NAME	DATE (YYMMDD)

### INTERVIEWER'S COMMENTS

WORK EMPLOYEE WAS DOING WHEN INTERVIEWED	ACTION <i>(If explanation is needed, use comments section)</i>	YES	NO
	IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?		
	ARE WAGE RATES AND POSTERS DISPLAYED?		

### FOR USE BY PAYROLL CHECKER

IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?

YES
  NO

COMMENTS

CHECKER			
LAST NAME	FIRST NAME	MI	JOB TITLE
SIGNATURE			DATE (YYMMDD)





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# EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

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## FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

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THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

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**PREVAILING  
WAGES**

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

**OVERTIME**

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

**ENFORCEMENT**

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

**APPRENTICES**

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

**PROPER PAY**

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

**1-866-4-USWAGE**  
(1-866-487-9243) TTY: 1-877-889-5627



**WHD**  
U.S. Wage and Hour Division

**WWW.WAGEHOUR.DOL.GOV**

**PROJECT WAGE DETERMINATION**

Insert here the applicable and most current US Department of Labor wage determination (available on their website <http://www.wdol.gov/dba.aspx>) as an attachment to the Davis Bacon Supplementary Conditions

Note: The project wage determination shall also be made into a poster for display on the project site.

General Decision Number: ME160019 01/08/2016 ME19

Superseded General Decision Number: ME20150019

State: Maine

Construction Type: Heavy

County: Penobscot County in Maine.

HEAVY CONSTRUCTION PROJECTS including Water and Sewer Lines

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the solicitation was issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.15 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2016. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/08/2016

ELEC0567-006 09/01/2015

PENOBSCOT COUNTY (Northern area including the Townships of Auburn, Dedham, Lewiston, Lisbon, Mechanic Falls, Minot and Poland)

	Rates	Fringes
ELECTRICIAN.....	\$ 30.53	15.27
-----		

ELEC1253-010 06/01/2015

PENOBSCOT COUNTY (Southern Area including the Townships of Alton, Argyle, Bangor, Bradford, Bradley, Brewer, Burlington, Carmel, Carroll, Charleston, Chester, Clifton, Corinna, Corinth, Dixmont, Eddington, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls, Greenbush, Greenfield, Hampden, Hermon, Holden, Howland, Hudson, Kenduskeag, LeGrange, Lakeville, Lee, Levant, Lincoln, Lowell, Mattamiscontis, Maxfield, Milford, Newburg, Newport, Old Town, Orono, Orrington, Passadumkeag, Plymouth, Prentiss, Seboeis, Springfield, Stetson, Summit, Veazie, Webster, Winn, 2R.8, 3R.1, 5R)

	Rates	Fringes
ELECTRICIAN.....	\$ 28.50	14.91

-----  
 \* PLUM0716-002 08/01/2015

	Rates	Fringes
PIPEFITTER (Industrial Work Only).....	\$ 26.25	14.96

-----  
 SUME2011-014 03/16/2011

	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 18.95	1.72
CONCRETE FINISHER.....	\$ 17.29	2.51
IRONWORKER, Reinforcing.....	\$ 20.00	0.00
LABORER: Common or General.....	\$ 12.29	1.38
LABORER: Landscape.....	\$ 15.00	0.58
LABORER: Pipelayer.....	\$ 14.42	2.38
LINE CONSTRUCTION: Lineman.....	\$ 26.95	9.90
OPERATOR: Asphalt Paver.....	\$ 18.12	2.83
OPERATOR: Asphalt Roller.....	\$ 16.09	1.92
OPERATOR: Backhoe.....	\$ 20.55	6.26
OPERATOR: Bulldozer.....	\$ 20.30	5.84
OPERATOR: Crane.....	\$ 22.60	9.29
OPERATOR: Drill.....	\$ 16.63	4.07
OPERATOR: Excavator.....	\$ 19.26	3.75
OPERATOR: Loader.....	\$ 17.39	4.33
OPERATOR: Mechanic.....	\$ 24.35	6.36
OPERATOR: Roller.....	\$ 16.22	6.78
TRUCK DRIVER: Dump Truck.....	\$ 12.05	2.98

-----  
 WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey.

#### Example:

PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates.

Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data.

EXAMPLE: UAVG-OH-0010 08/29/2014.

UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

**REQUEST FOR AUTHORIZATION OF  
ADDITIONAL CLASSIFICATION AND RATE**

CHECK APPROPRIATE BOX  
 SERVICE CONTRACT  
 CONSTRUCTION CONTRACT

OMB Number: **9000-0089**  
 Expiration Date: **7/31/2014**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Office of Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.

**INSTRUCTIONS:** THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER.

<b>1. TO:</b> ADMINISTRATOR, Employment Standards Administration WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. 20210	<b>2. FROM:</b> (REPORTING OFFICE)
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3. CONTRACTOR	4. DATE OF REQUEST
---------------	--------------------

5. CONTRACT NUMBER	6. DATE BID OPENED (SEALED BIDDING)	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED (IF APPLICABLE) (SCA ONLY)
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10. SUBCONTRACTOR (IF ANY)

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

12. LOCATION (CITY, COUNTY AND STATE)

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: \_\_\_\_\_ DATED: \_\_\_\_\_

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY) <i>(Use reverse or attach additional sheets, if necessary)</i>	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)	15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE
--	--

16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE	TITLE	CHECK APPROPRIATE BOX-REFERENCING BLOCK 13. <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE
---	-------	---

**TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))**

- THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.
- THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

*(Send copies 1, 2, and 3 to Department of Labor)*

SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE	TITLE AND COMMERCIAL TELEPHONE NO.	DATE SUBMITTED
--	------------------------------------	----------------



# Owner's Davis-Bacon Compliance Report



**Project Name** \_\_\_\_\_ **SRF Project** \_\_\_\_\_

**Project Owner:** \_\_\_\_\_

**Certified Payrolls Reviewed By:** \_\_\_\_\_  
(Printed name of Owner's Representative)

**Employee interviews have been conducted in accordance with the contract requirements.** Yes  No

**Prime Contractor:** \_\_\_\_\_

**Prime Contractor's Pay Application No:** \_\_\_\_\_ (Note: Only one allowed per Compliance Report)

**Application Period: From** \_\_\_\_\_ **to** \_\_\_\_\_

**Check one box and sign below:**

- For the application period indicated, there were no certified payrolls reported because there were no workers on the site that were subject to the Davis-Bacon and Related Acts.
- For the application period indicated, the certified payrolls are in compliance with the Davis-Bacon and Related Acts.
- For the application period indicated, the certified payrolls are not in compliance with the Davis-Bacon and Related Acts. A Compliance Report for the corrective action will be submitted ASAP.

**Summary of noncompliant findings and follow up actions needed:**

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\_\_\_\_\_  
**Owner's Representative Signature**

\_\_\_\_\_  
**Date**



## Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Participation Form

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE<sup>1</sup> subcontractor<sup>2</sup> the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received by Prime Contractor

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Performance Form**

This form is intended to capture the DBE<sup>1</sup> subcontractor's<sup>2</sup> description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractor's bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: ___ DOT ___ SBA ___ Other: _____		Meets/ exceeds EPA certification standards? ___ YES ___ NO ___ Unknown

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

<b>Subcontractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

### Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE<sup>1</sup> subcontractors<sup>2</sup> and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	__ YES	__ NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

Continue on back if needed

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.



**STATE OF MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
CWSRF DBE PROGRAM**

**PROGRESS REPORT OF DBE SUBCONTRACTOR UTILIZATION FORM**

TO INSURE PROMPT PAYMENT THE FOLLOWING INFORMATION MUST BE SUBMITTED WITH ALL REIMBURSEMENT REQUESTS WHETHER THEY INCLUDE INVOICED AMOUNTS FROM A QUALIFYING WBE OR MBE PARTICIPANT OR NOT:

Municipality/District: \_\_\_\_\_ SRF #: \_\_\_\_\_

Name of Project: \_\_\_\_\_ Contractor: \_\_\_\_\_

Contractor's Payment Request No. \_\_\_\_\_ Period covered by the request \_\_\_\_\_

The accompanying Reimbursement Request includes the following WBE/MBE participation:

Name & Address of WBE/MBE firm to be paid	WBE	MBE	Source of Certification, i.e., DOT, EPA or SBA	Amount to be paid this request	Type of Work

This attachment must be signed by an authorized representative of the contractor.

Signature \_\_\_\_\_ Date \_\_\_\_\_

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

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

Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

# DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> :  <b>Congressional District, if known:</b> _____	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>   <b>Congressional District, if known:</b> _____	
<b>6. Federal Department/Agency:</b> _____	<b>7. Federal Program Name/Description:</b>  CFDA Number, <i>if applicable</i> : _____	
<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i> _____	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i> _____	
<b>11.</b> ation requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 4/2012)

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

\_\_\_\_\_  
EPA Project Control Number

## **CERTIFICATION REGARDING LOBBYING**

### **CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Typed Name & Title of Authorized Representative

\_\_\_\_\_  
Signature and Date of Authorized Representative



## From the “Consolidated Appropriations Act, 2014”

H.R. 3547 (PL113-76, enacted 1/17/2014)

### USE OF AMERICAN IRON AND STEEL

“SEC. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency’s capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.”



**CERTIFICATION BY THE OWNER  
OF COMPLIANCE WITH THE  
USE OF AMERICAN IRON AND STEEL LAW  
enacted on 1/17/2014**

*(To be attached to each SRF requisition submitted for payment)*

We, the Owner named, \_\_\_\_\_, having obtained a loan from the State of Maine Clean Water State Revolving Fund (CWSRF), to fund the Project named \_\_\_\_\_, hereby submit to the Department of Environmental Protection, certification from each contractor working on the Project that the use of American Iron and Steel in the construction of the Project complies with the law, or that a waiver has been obtained from the U.S. Environmental Protection Agency. Thereby, it is to the best of the Owner's knowledge that the costs being requested with this SRF requisition # \_\_\_\_\_ are in compliance with the Use of American Iron and Steel Law.

\_\_\_\_\_  
Signature of Official

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Date

Attachment: Certification by Contractor



**CERTIFICATION BY CONTRACTOR  
OF COMPLIANCE WITH THE  
USE OF AMERICAN IRON AND STEEL LAW  
enacted on 1/17/2014**

*(To be attached to each pay application submitted for payment)*

We, the Prime Contractor and Subcontractors, as named below, hereby certify that the use of American iron and steel in the construction of the Project named \_\_\_\_\_, being requested in the pay application (or invoice) # \_\_\_\_\_ and dated \_\_\_\_\_, complies with the Use of American Iron and Steel Law, or that a waiver been obtained from the U.S. Environmental Protection Agency.

Prime Contractor Name: \_\_\_\_\_

_____ Signature of Official	_____ Printed name	_____ Date
--------------------------------	-----------------------	---------------

<u>Subcontractor Name</u>	<u>Signature of Official</u>	<u>Date</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

# Sample Step Manufacturer Certification

*(Documentation must be provided on company letterhead)*

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Manufacturer Certification for  
Project Name \_\_\_\_\_

I, \_\_\_\_\_ (company representative), certify that the \_\_\_\_\_  
(melting, bending, coating, galvanizing, cutting, etc.) process for \_\_\_\_\_  
(manufacturing or fabricating) the following products and/or materials shipped or provided for  
the project is in full compliance with the American Iron and Steel requirement as mandated in  
EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Such process took place at the following location: \_\_\_\_\_(address)

If any of the above compliance statements change while providing material to this project we  
will immediately notify the prime contractor and the engineer.

\_\_\_\_\_  
Company representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Covered Iron and Steel Products

(Guidance taken from EPA Memorandum dated March 20, 2014)

### **1) What is an iron or steel product?**

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail below);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail below);
- Reinforced precast concrete; and
- Construction materials (defined in more detail below).

### **2) What does the term ‘primarily iron or steel’ mean?**

‘Primarily iron or steel’ places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

### **3) Can you provide an example of how to perform a cost determination?**

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem, coupling, valve, seals, etc). However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

**4) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product be produced in the US?**

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

**5) What is the definition of steel?**

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

**6) What does ‘produced in the United States’ mean?**

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

**7) Are the raw materials used in the production of iron or steel required to come from US sources?**

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

**8) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?**

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

**9) What is the definition of ‘municipal castings’?**

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

- Access Hatches;
- Ballast Screen;
- Benches (Iron or Steel);
- Bollards;
- Cast Bases;
- Cast Iron Hinged Hatches, Square and Rectangular;
- Cast Iron Riser Rings;
- Catch Basin Inlet;
- Cleanout/Monument Boxes;
- Construction Covers and Frames;
- Curb and Corner Guards;
- Curb Openings;
- Detectable Warning Plates;
- Downspout Shoes (Boot, Inlet);
- Drainage Grates, Frames and Curb Inlets;
- Inlets;
- Junction Boxes;
- Lampposts;
- Manhole Covers, Rings and Frames, Risers;
- Meter Boxes;
- Service Boxes;
- Steel Hinged Hatches, Square and Rectangular;
- Steel Riser Rings;
- Trash receptacles;
- Tree Grates;
- Tree Guards;
- Trench Grates; and
- Valve Boxes, Covers and Risers.

### **10) What is ‘structural steel’?**

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

### **11) What is a ‘construction material’ for purposes of the AIS requirement?**

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

### **12) What is not considered a ‘construction material’ for purposes of the AIS requirement?**

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

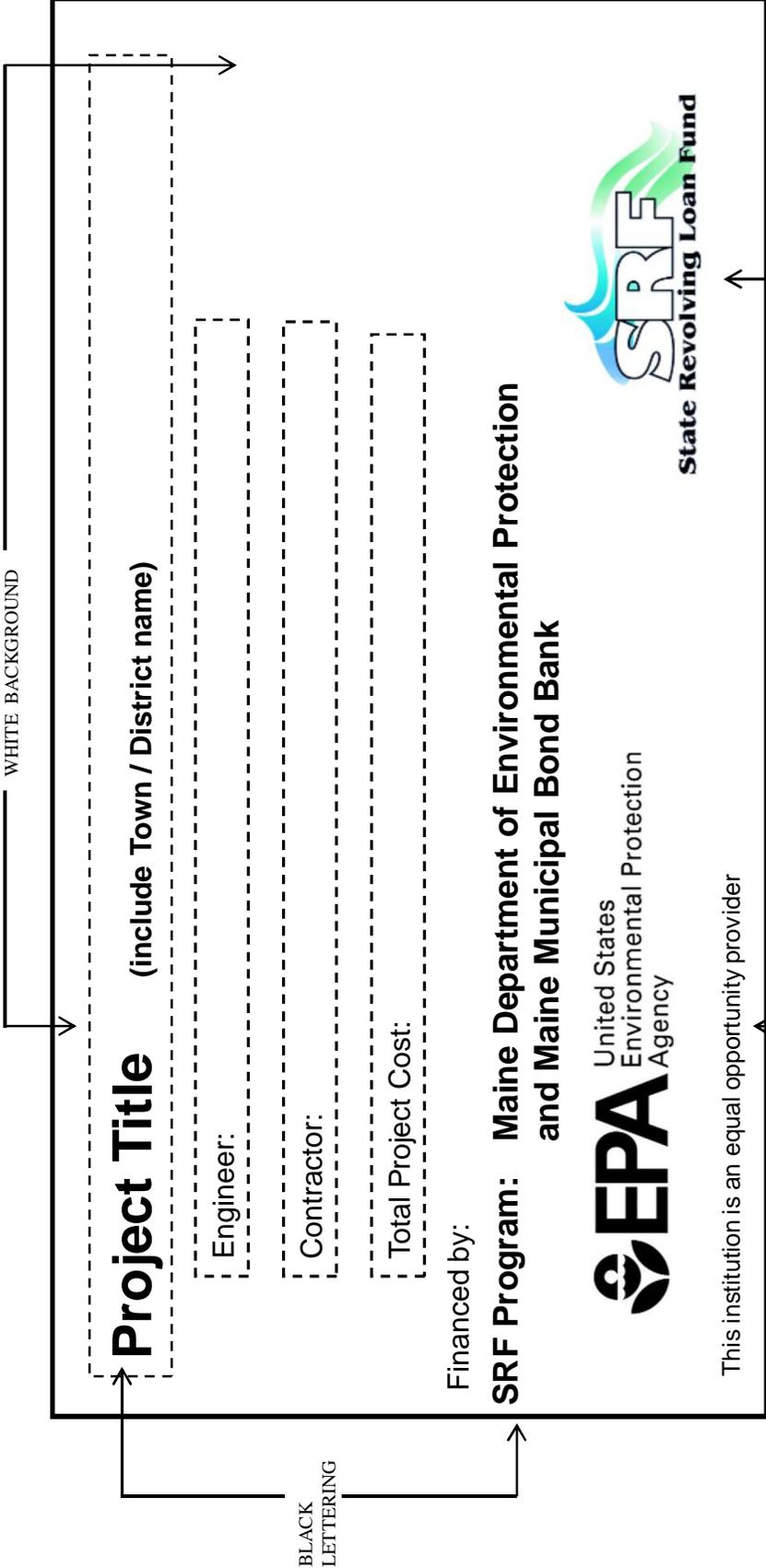
**13) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?**

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

**14) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?**

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin. If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

# Temporary Construction Sign for CWSRF Projects



BLUE, PMS 655 FADING TO 30% SCREEN  
 GREEN, PMS 627 @ 30% SCREEN DARKENING  
 TO 100% SCREEN THEN BACK TO 30% SCREEN

MINIMUM SIGN DIMENSIONS: 1200 x 2400 x 19 MM (4' x 8' x 3/4")

EXTERIOR PLYWOOD (A-B GRADE)

MINIMUM LETTERING SIZE: 5 CM (2-INCHES)

**G. GENERAL CONDITIONS OF THE CONSTRUCTION  
CONTRACT**



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## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## TABLE OF CONTENTS

	<b>Page</b>
Article 1 – Definitions and Terminology .....	1
1.01 Defined Terms .....	1
1.02 Terminology .....	7
Article 2 – Preliminary Matters .....	9
2.01 Delivery of Bonds and Evidence of Insurance .....	9
2.02 Copies of Documents .....	9
2.03 Before Starting Construction .....	9
2.04 Preconstruction Conference; Designation of Authorized Representatives .....	10
2.05 Initial Acceptance of Schedules .....	10
2.06 Electronic Transmittals.....	10
Article 3 – Documents: Intent, Requirements, Reuse .....	11
3.01 Intent.....	11
3.02 Reference Standards .....	11
3.03 Reporting and Resolving Discrepancies .....	12
3.04 Requirements of the Contract Documents .....	13
3.05 Reuse of Documents .....	13
Article 4 – Commencement and Progress of the Work .....	14
4.01 Commencement of Contract Times; Notice to Proceed .....	14
4.02 Starting the Work.....	14
4.03 Reference Points .....	14
4.04 Progress Schedule .....	14
4.05 Delays in Contractor’s Progress .....	15
Article 5 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions .....	16
5.01 Availability of Lands .....	16
5.02 Use of Site and Other Areas .....	16
5.03 Subsurface and Physical Conditions.....	17
5.04 Differing Subsurface or Physical Conditions .....	17

---

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5.05	Underground Facilities .....	19
5.06	Hazardous Environmental Conditions at Site .....	21
Article 6 – Bonds and Insurance .....		22
6.01	Performance, Payment, and Other Bonds .....	22
6.02	Insurance—General Provisions .....	23
6.03	Contractor’s Insurance .....	24
6.04	City’s Liability Insurance .....	27
6.05	Property Insurance .....	28
6.06	Waiver of Rights .....	30
6.07	Receipt and Application of Property Insurance Proceeds .....	31
Article 7 – Contractor’s Responsibilities .....		32
7.01	Supervision and Superintendence .....	32
7.02	Labor; Working Hours .....	32
7.03	Services, Materials, and Equipment.....	32
7.04	“Or Equals” .....	33
7.05	Substitutes .....	34
7.06	Concerning Subcontractors, Suppliers, and Others .....	35
7.07	Patent Fees and Royalties .....	37
7.08	Permits .....	38
7.09	Taxes .....	38
7.10	Laws and Regulations.....	38
7.11	Record Documents.....	39
7.12	Safety and Protection.....	39
7.13	Safety Representative .....	40
7.14	Hazard Communication Programs .....	40
7.15	Emergencies .....	40
7.16	Shop Drawings, Samples, and Other Submittals.....	40
7.17	Contractor’s General Warranty and Guarantee.....	43
7.18	Indemnification .....	44
7.19	Delegation of Professional Design Services .....	45
Article 8 – Other Work at the Site .....		45
8.01	Other Work .....	45

---

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8.02	Coordination .....	46
8.03	Legal Relationships.....	46
Article 9 – City’s Responsibilities .....		47
9.01	Communications to Contractor.....	47
9.02	Replacement of Engineer .....	48
9.03	Furnish Data .....	48
9.04	Pay When Due.....	48
9.05	Lands and Easements; Reports, Tests, and Drawings .....	48
9.06	Insurance.....	48
9.07	Change Orders.....	48
9.08	Inspections, Tests, and Approvals.....	48
9.09	Limitations on City’s Responsibilities.....	48
9.10	Undisclosed Hazardous Environmental Condition.....	48
9.11	Evidence of Financial Arrangements.....	48
9.12	Safety Programs .....	49
Article 10 – Engineer’s Status During Construction.....		49
10.01	City’s Representative .....	49
10.02	Visits to Site.....	49
10.03	Project Representative.....	49
10.04	Rejecting Defective Work.....	49
10.05	Shop Drawings, Change Orders and Payments.....	50
10.06	Determinations for Unit Price Work .....	50
10.07	Decisions on Requirements of Contract Documents and Acceptability of Work .....	50
10.08	Limitations on Engineer’s Authority and Responsibilities.....	50
10.09	Compliance with Safety Program.....	51
Article 11 – Amending the Contract Documents; Changes in the Work .....		51
11.01	Amending and Supplementing Contract Documents .....	51
11.02	City- Authorized Changes in the Work.....	52
11.03	Unauthorized Changes in the Work.....	52
11.04	Change of Contract Price .....	52
11.05	Change of Contract Times .....	53
11.06	Change Proposals .....	54

---

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---

11.07	Execution of Change Orders.....	55
11.08	Notification to Surety.....	55
Article 12 – Claims.....		55
12.01	Claims.....	55
Article 13 – Cost of the Work; Allowances; Unit Price Work.....		57
13.01	Cost of the Work .....	57
13.02	Allowances .....	60
13.03	Unit Price Work .....	61
Article 14 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work.....		61
14.01	Access to Work.....	61
14.02	Tests, Inspections, and Approvals.....	62
14.03	Defective Work.....	63
14.04	Acceptance of Defective Work.....	63
14.05	Uncovering Work .....	63
14.06	City May Stop the Work .....	64
14.07	City May Correct Defective Work .....	64
Article 15 – Payments to Contractor; Set-Offs; Completion; Correction Period .....		65
15.01	Progress Payments .....	65
15.02	Contractor’s Warranty of Title .....	69
15.03	Substantial Completion.....	69
15.04	Partial Use or Occupancy .....	70
15.05	Final Inspection .....	70
15.06	Final Payment.....	71
15.07	Waiver of Claims .....	72
15.08	Correction Period .....	72
Article 16 – Suspension of Work and Termination.....		73
16.01	City May Suspend Work .....	73
16.02	City May Terminate for Cause.....	74
16.03	City May Terminate For Convenience.....	75
16.04	Contractor May Stop Work or Terminate .....	75
Article 17 – Final Resolution of Disputes .....		76
17.01	Methods and Procedures.....	76

---

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---

Article 18 – Miscellaneous .....	76
18.01 Giving Notice .....	76
18.02 Computation of Times.....	76
18.03 Cumulative Remedies .....	77
18.04 Limitation of Damages .....	77
18.05 No Waiver .....	77
18.06 Survival of Obligations .....	77
18.07 Controlling Law .....	77
18.08 Headings.....	77

## 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.
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  2. *Agreement*—The written instrument, executed by City, 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 City.
  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 City as appropriate 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 City 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 City, 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. *City*—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.
12. *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. §§5501 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.

13. *Contract*—The entire and integrated written contract between the City, and Contractor concerning the Work.
14. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
15. *Contract Price*—The money that City have agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
16. *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.
17. *Contractor*—The individual or entity with which City has contracted for performance of the Work.
18. *Cost of the Work*—See Paragraph 13.01 for definition.
19. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
20. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
21. *Engineer*—The individual or entity named as such in the Agreement.
22. *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.
23. *Geotechnical Baseline Report (GBR)* – The interpretive report prepared by or for City regarding subsurface conditions at the Site, and containing specific baseline geotechnical conditions that may be anticipated or relied upon for bidding and contract administration purposes, subject to the controlling provisions of the Contract, including the GBR’s own terms. The GBR is a Contract Document.
24. *Geotechnical Data Report (GDR)* – The factual report that collects and presents data regarding actual subsurface conditions at or adjacent to the Site, including Technical Data and other geotechnical data, prepared by or for the City in support of the Geotechnical Baseline Report. The GDR’s content may include logs of borings, trenches, and other site investigations, recorded measurements of subsurface water levels, the results of field and laboratory

testing, and descriptions of the investigative and testing programs. The GDR does not include an interpretation of the data. If opinions, or interpretive or speculative non-factual comments or statements appear in a document that is labeled a GDR, such opinions, comments, or statements are not operative parts of the GDR and do not have contractual standing. Subject to that exception, the GDR is a Contract Document.

25. *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.
26. *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.
27. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
28. *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.
29. *Notice of Award*—The written notice by City to a Bidder of City's acceptance of the Bid.
30. *Notice to Proceed*—A written notice by City to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
31. *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.
32. *Project*—The total undertaking to be accomplished for City by engineers, contractors, and others, including planning, study, design, construction, testing,

commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *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.
34. *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.
35. *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.
36. *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.
37. *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.
38. *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.
39. *Site*—Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by City which are designated for the use of Contractor.
40. *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.

41. *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.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
43. *Successful Bidder*—The Bidder whose Bid the City accepts, and to which the City makes an award of contract, subject to stated conditions.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *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.
46. *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.

47. *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.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by City as appropriate 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 City 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 City, Contractor shall also deliver to City 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 City, Contractor shall also deliver to City, 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 City's Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, City 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 City under Article 6.

### **2.02 *Copies of Documents***

- A. City shall furnish to Contractor one printed copy 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. City 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. City shall make such original printed record version of the Contract available to Contractor for review. City 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 City, 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, City, 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 City, 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 City, 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 City, 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 City, 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 City, 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 City 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 City, 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 City, and Contractor that Engineer is unable to provide a decision or interpretation. If City, 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 City, 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 City'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. City 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 City. 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 City. 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 City, and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If City, Engineer, or anyone for whom City's 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 City, 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 City, 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. City shall furnish the Site. City 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, City 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 City'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 City, 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 City, 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 City. 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. No reports of explorations or tests of subsurface conditions at or adjacent to the Site, or drawings of physical conditions relating to existing surface or subsurface structures at the Site, are known to City.

#### 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 City, 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 City'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 City 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 City in writing of Engineer's findings, conclusions, and recommendations.
- C. *City's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, City 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 City 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 City, 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 City's issuance of the City'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 City, or Engineer by the owners of such Underground Facilities, including City, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
  1. City, 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 City) 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 City, 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 City 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 City 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. *City's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, City 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 City, 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 City's issuance of the City's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to City. *Reports and Drawings*: The Supplementary Conditions identify:
- B. Not used.
- 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 City, and Engineer (and promptly thereafter confirm such notice in writing). City shall promptly consult with Engineer concerning the necessity for City to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, City shall take such actions as are necessary to permit City 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 City 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 City 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 City, 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 City's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or City 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 City 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. City may have such deleted portion of the Work performed by City's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, City 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.H shall obligate City 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 City, 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 City, , 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, City may exclude the Contractor from the Site and exercise City's termination rights under Article 16.
- F. Upon request, City 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. City, 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 City, 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 City, 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 City, 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. City 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 City has obtained and is maintaining the policies, coverages, and endorsements required of City by the Contract (if any). Upon request by Contractor or any other insured, City 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. City may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of City, or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of City, 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, City may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise their 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. City 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 City, 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 City, 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 City, 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 City, 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.
- K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation, and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:

Workers' Compensation Insurance	Statutory
Employer's Liability Insurance	\$100,000 each accident \$500,000. disease - policy unit \$100,000. disease - each employee

Comprehensive General Liability (Public Liability) Insurance including:

General Liability	\$1,000,000. Aggregate
Products, Completed Operations	\$1,000,000. Aggregate
Personal & Advertising Injury	\$ 500,000.
Each Occurrence	\$ 500,000.
Fire Damage	\$ 50,000. any one fire
Medical Expense	\$ 5,000. any one person

Automobile Liability Insurance (owned, hired & non-owned):

Bodily Injury &  
Property Damage

\$1,000,000 combined  
single limit

6.04 *City's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, City, at City's option, may purchase and maintain at their expense their own liability insurance as will protect them against claims which may arise from operations under the Contract Documents.
- B. City's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon City's liability policies for any of Contractor's obligations to the City, 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 City, 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 City, 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 City- or 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 City, such that those portions of the Work that are not yet occupied or used by City 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 City, 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 City:* If City 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 City (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 City may come off the builder's risk policy, while those portions of the Work not yet occupied or used by City 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. City, 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 City, or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

- B. City waive 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 City 's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by City ; 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 City 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 City 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 City, 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 City, 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 City’s written consent, which will not be unreasonably withheld.
  - 1. Regular working hours will be 7:00 a.m. to sunset, Monday through Friday.

### **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 City . 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 the City .
    - b. Contractor certifies that, if approved and incorporated into the Work:
      - 1) there will be no increase in cost to the City 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 City 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 City . 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:* City 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 City r for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse City for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with City) 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 City.
- 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, City 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 City, as appropriate, the identity of the proposed Subcontractor or Supplier (unless City has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable unless City raises a substantive, reasonable objection within five days.
- E. City may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. City also may require Contractor to retain specific replacements; provided, however, that City 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 City, and City has accepted it (either in writing or by failing to make written objection thereto), then City 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 City 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 City's requirement of replacement.
- G. No acceptance by City of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of City 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 City, 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, City, 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 City, and Engineer.

- N. City 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 City, or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
  - 2. shall create any obligation on the part of City, 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 City, 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 City in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, City 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 City, 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. City 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). City 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.
- B. City are exempt from payment of sales and compensating use taxes of the State of Maine and of cities and counties thereof on all materials to be incorporated into the Work.
  - 1. City will furnish the required certificates of tax exemption to the Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
  - 2. City's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into 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 City, 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 City, 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. City, 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 City, 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 City 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 City; 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 City's safety programs, if any. The Supplementary Conditions identify any City's safety programs that are applicable to the Work.
- D. Contractor shall inform City, and Engineer of the specific requirements of Contractor's safety program with which City'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 City, 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 City 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 City for such time. City 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 City for its review time, and City 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 City 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 City of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by City;
  4. use or occupancy of the Work or any part thereof by City;
  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 City.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by City, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to City 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 City, 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 City, 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, City, 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. City, 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 City, 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 City, 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 City may perform other work at or adjacent to the Site. Such other work may be performed by City's employees, or through contracts between the City and third parties. City may also arrange

to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

- B. If City performs other work at or adjacent to the Site with City's employees, or through contracts for such other work, then City shall give Contractor written notice thereof prior to starting any such other work. If City has advance information regarding the start of any utility work at or adjacent to the Site, City 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 City, if performing other work with City'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 City 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 City'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, City 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 City, their employees, any other contractor working for City, or any utility owner 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 City 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 City, 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 City may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the City's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When City is performing other work at or adjacent to the Site with their employees, Contractor shall be liable to City for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by City as a result of Contractor's failure to take reasonable and customary measures with respect to City's other work. In response to such damage, delay, disruption, or interference, City 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, City, 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 City, 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 – CITY'S RESPONSIBILITIES**

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

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

9.02 *Replacement of Engineer*

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

9.04 *Pay When Due*

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

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

- A. City's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. City's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to City'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. City'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. City's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on City's Responsibilities*

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

9.12 *Safety Programs*

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

9.13 City will furnish a "Site Representative" to represent City at the Site and assist City in observing the progress and quality of the Work.

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

10.01 *City's Representative*

- A. Engineer will be City's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as City'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 City, 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 City 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 City informed of the progress of the Work and will endeavor to guard City 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 City, 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 City designates another representative or agent to represent City 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 City, or Contractor, and will not be liable to City, 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 City'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. City, 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. City 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 City 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 *City- Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, City 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 City, 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 11.01.C.2.a and 11.01.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 City 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 City 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 City 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 City regarding the Change Proposal, and consider any comments or response from City 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 City, and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either City, 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 City, and Contractor, unless City, 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. City, 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 a City set-off, unless Contractor has duly contested such set-off;
  3. changes in the Work which are: (a) ordered by City pursuant to Paragraph 11.02, (b) required because of City's acceptance of defective Work under Paragraph 14.04 or City'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 City, 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 City and Contractor shall be submitted to the Claims process set forth in this Article:
1. Appeals by City, or Contractor of Engineer's decisions regarding Change Proposals;

2. City 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, City, 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 City, and Contractor agree to mediation, then after 60 days from such agreement, either City, 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. City, 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 City, 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 City, 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 City, 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 City.

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 City as appropriate deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to City. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to City as appropriate, 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 City, Contractor shall obtain competitive bids from subcontractors acceptable to City, and Contractor and shall deliver such bids to City, 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 City 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 City. 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 City, 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 City 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 City, 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 City 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 City believes that City 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. City, Engineer, their consultants and other representatives and personnel of City, 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. City 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 City, 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 City;
  - 2. to attain City'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 City, and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by City, 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 City, 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 City'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 City 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 City, and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then City 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, City prefers to accept it, City 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 City'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 City 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 City.

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require special 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 City 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 *City 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 City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of City to stop the Work shall not give rise to any duty on the part of City 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 *City 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 City 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, City shall proceed expeditiously. In connection with such corrective or remedial action, City 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 City has paid Contractor but which are stored elsewhere. Contractor shall allow City, their representatives, agents and employees, their

other contractors, and Engineer and Engineer's consultants access to the Site to enable City to exercise the rights and remedies under this paragraph.

- C. All claims, costs, losses, and damages incurred or sustained by City 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 City of City'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 City 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 City's interest therein, all of which must be satisfactory to City.
  - 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 City, 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 City, 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 City or entitle City 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 City 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 City stated in Paragraph 15.01.C.2.
  6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect City from loss because:
    - a. the Work is defective, requiring correction or replacement;
    - b. the Contract Price has been reduced by Change Orders;
    - c. City has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
    - d. City 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 City with Engineer's recommendation, the amount recommended (subject to any City set-offs) will become due, and when due will be paid by City to Contractor.

**E. *Reductions in Payment by City:***

1. In addition to any reductions in payment (set-offs) recommended by Engineer, City is entitled to impose a set-off against payment based on any of the following:
  - a. claims have been made against City on account of Contractor's conduct in the performance or furnishing of the Work, or City 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. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
- e. City 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. City 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 City to secure the satisfaction and discharge of such Liens;
- l. there are other items entitling City to a set off against the amount recommended.

2. If City imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, City 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. City shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by City, 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 City'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 City 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 City.

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify City, 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 City, and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, City, 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 City 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. City 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 City, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If City does not object to the provisions of the certificate, or if despite consideration of City's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to City, 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 City.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, City, and Contractor will confer regarding City'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 City. Unless City, and Contractor agree otherwise in writing, City shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon City'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. City 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, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by City 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 City may request in writing that Contractor permit City to use or occupy any such part of the Work that City believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, City, 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 City, 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, City, 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 City, 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 City, 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 City 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 City) 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 City, 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 City might in any way be responsible, or which might in any way result in liens or other burdens on City'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 City to indemnify City against any Lien, or City at their 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 City for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect City from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to City, 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 City of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum City 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 City to Contractor.

#### 15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by City of claims or rights against Contractor. City expressly reserve 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 City, 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 City 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 City 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 City, 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 City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City 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 *City May Suspend Work***

- A. At any time and without cause, City 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 *City 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 City, 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 City is considering a declaration that Contractor is in default and termination of the contract, City 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 City under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if City has terminated the Contract for cause, City 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 City has paid Contractor but which are stored elsewhere, and complete the Work as City may deem expedient.
- D. City 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 City 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 City, 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 City. Such claims, costs, losses, and damages incurred by City 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, City shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue, or any rights or remedies of City against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by City 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 *City May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, City may, without cause and without prejudice to any other right or remedy of City, 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 City 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) City fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to City, and Engineer, and provided City, or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from City 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 City has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to City, 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 City 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, City, 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 City, 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.

## **H. NOTICE OF AWARD**

# Notice of Award

Date: \_\_\_\_\_, 2016

Project: <u>COURT STREET SEWER SEPARATION PROJECT</u>	
Owner: City of Bangor	Owner's Contract No.:
Contract:	Engineer's Project No.:
Bidder:	
Bidder's Address:	

You are notified that your Bid dated \_\_\_\_\_ for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for Court Street Sewer Separation Project.

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

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

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

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

1. Deliver to the Owner [6] fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security [Bonds] as specified in the Instructions to Bidders (Article 20), General Conditions (Paragraph 5.01), and Supplementary Conditions (Paragraph SC-5.01).
3. Other conditions precedent:

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

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

\_\_\_\_\_  
City of Bangor, Maine  
Owner  
By: \_\_\_\_\_  
Authorized Signature  
City Manager  
\_\_\_\_\_  
Title

Copy to Engineer

## **I. NOTICE TO PROCEED**

# Notice to Proceed

Date: \_\_\_\_\_, 2016

---

Project: COURT STREET SEWER SEPARATION PROJECT

---

Owner: City of Bangor

---

Owner's Contract No.: \_\_\_\_ 1 \_\_\_\_

---

Contract:

---

Engineer's Project No.: \_\_\_\_ 1 \_\_\_\_

---

Contractor:

---

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

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You are notified that the Contract Times under the above Contract will commence to run on \_\_\_\_\_. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the project must be completed on or before \_\_\_\_\_.

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

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

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

---

Owner

---

City of Bangor

---

Given by:

---

Given by:

---

Authorized Signature

---

Authorized Signature

---

Title

---

Title

---

Date

---

Date

---

Copy to Engineer

## **J. PERFORMANCE BOND**

# PERFORMANCE BOND

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

---

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

OWNER (*Name and Address*):

## CONTRACT

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

## BOND

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

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

## CONTRACTOR AS PRINCIPAL

## SURETY

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

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

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

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

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

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

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

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

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

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

11. Definitions.

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

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

Surety Agency or Broker:

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

## **K. PAYMENT BOND**

# PAYMENT BOND

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

---

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*):

## CONTRACT

Effective Date of Agreement:

Amount:

Description (*Name and Location*):

## BOND

Bond Number:

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

Amount:

Modifications to this Bond Form:

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

## CONTRACTOR AS PRINCIPAL

## SURETY

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

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

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

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

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

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

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

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

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

15. Definitions

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

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

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

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

Surety Agency or Broker:

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

## **L. APPLICATION FOR PAYMENT**







# Stored Material Summary

# Contractor's Application

A		B		C		D		E		F		G
Invoice No.	Shop Drawing Transmittal No.	Materials Description		Stored Previously Date (Month/Year)	Stored Previously Amount (\$)	Stored this Month Amount (\$)	Subtotal	Incorporated in Work Date (Month/Year)	Incorporated in Work Amount (\$)	Materials Remaining in Storage (\$ (D + E - F))		
<b>Totals</b>												

For (contract):

Application Number:

Application Period:

Application Date:

**Engineers Joint Documents Committee  
Design and Construction Related Documents  
Instructions and License Agreement**

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EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

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EJCDC's entire liability and your exclusive remedy shall be:

1. the replacement of any document not meeting EJCDC's "Limited Warranty" which is returned to EJCDC's selling agent with a copy of your receipt, or
2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of

defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

In no event will EJCDC be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use **EJCDC Design and Construction Related Documents** even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

**General:**

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.  
General Counsel  
National Society of Professional  
Engineers  
1420 King Street  
Alexandria, VA 22314  
  
Phone: (703) 684-2845  
Fax: (703) 836-4875  
e-mail: aschwartz@nspe.org

**You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.**

**M. CERTIFICATE OF SUBSTANTIAL COMPLETION**

# Certificate of Substantial Completion

Project: COURT STREET SEWER SEPARATION PROJECT

Owner: City of Bangor

Owner's Contract No.: XX

Contract: 2016-XX

Engineer's Project No.: 60336877

**This [tentative] [definitive] Certificate of Substantial Completion applies to:**

All Work under the Contract Documents:       The following specified portions of the Work:

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Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby declared and is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

A [tentative] [definitive] list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as provided in the Contract Documents except as amended as follows:**

Amended Responsibilities                       Not Amended

Owner's Amended Responsibilities:

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Contractor's Amended Responsibilities:

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